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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 24, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 6122 of April 26, 1990

National Arbor Day, 1990

By the President of the United States of America

A Proclamation

When our Nation was founded more than 200 years ago, it boasted such dense forests that one European visitor was moved to write, "the entire country is one vast wood." During the 19th century, however, as our young Republic grew and prospered and new towns and industries spread across the frontier, the heavy use of wood for fuel, lumber, and other products began to deplete our Nation's trees at an alarming rate.

To dramatize the need to preserve America's dwindling tree supply, concerned residents of Nebraska observed the first Arbor Day in 1872. Julius Sterling Morton, the prominent Nebraska politician who later became our third Secretary of Agriculture, was instrumental in encouraging other States to follow suit. Today, Arbor Day is an excellent occasion for all Americans to commit themselves to participating in one of the most important environmental efforts of the decade: our Administration's plan to plant one billion new trees every year for the next 10 years.

The spirit of environmental stewardship that animates our annual Arbor Day activities is the same spirit that inspires our tree-planting efforts throughout the year. Thanks to the work of concerned citizens and officials at every level of government, we currently have more timber growing in our forests than at any other time in the past 40 years. Last year we set a record in acreage of trees planted in a single year.

However, Arbor Day celebrates much more than the cultivation of trees. It calls increased attention to the importance of reforestation not only in our national forests but also in tropical forests, rain forests, and wetlands around the world. It also provides an occasion to recognize the excellent management practices utilized by private and public foresters in their efforts to respond to the ever-increasing demand for wood products in this country.

As we observe Arbor Day, let us gratefully acknowledge the thousands of Americans who are engaged in efforts to plant and care for trees in their cities and neighborhoods. From children aided by their parents or teachers to volunteers involved in highly organized reforestation and wildlife habitat restoration projects, Americans of all ages are helping to improve our communities, parks, forests, and wilderness areas. Their efforts will help to clean our air, improve the quality of our water, and shelter us from the sun and wind. To them goes the lasting honor described by the American clergyman and author, Henry Van Dyke: "He that planteth a tree is the servant of God, He provideth a kindness for many generations, and faces that he hath not seen shall bless him."

In recognition of the value of planting trees, the Congress, by Senate Joint Resolution 258, has authorized and requested the President to issue a proclamation designating the last Friday of April 1990 as "National Arbor Day."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim April 27, 1990, as National Arbor Day. I call upon the people of the United States to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of April, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.

George Bush

[FR Doc. 90-10229
Filed 4-27-90; 3:47 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6123 of April 26, 1990

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to Title V of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461 *et seq.*), the President may designate specified articles provided for in the Harmonized Tariff Schedule of the United States (HTS) as eligible for preferential tariff treatment under the Generalized System of Preferences (GSP) when imported from designated beneficiary developing countries.

2. Pursuant to section 504(c) of the 1974 Act (19 U.S.C. 2464(c)), beneficiary developing countries, except those designated as least-developed beneficiary developing countries pursuant to section 504(c)(6) of the 1974 Act, are subject to limitations on the preferential treatment afforded under the GSP. Pursuant to section 504(c)(5) of the 1974 Act, a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article if imports of such article from such country did not exceed the limitations in section 504(c)(1) (after application of section 504(c)(2)) during the preceding calendar year. Further, pursuant to section 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), the limitations provided in section 504(c)(1)(B) shall not apply with respect to an eligible article if a like or directly competitive article was not produced in the United States on January 3, 1985.

3. Sections 502(b)(7) and 502(c)(7) of the 1974 Act (19 U.S.C. 2462(b)(7) and 2462(c)(7)) provide that a country that has not taken or is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act (19 U.S.C. 2462(a)(4)), is ineligible for designation as a beneficiary developing country for purposes of the GSP. Pursuant to section 504 of the 1974 Act, the President may withdraw, suspend, or limit the application of duty-free treatment under the GSP with respect to any article or with respect to any country upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

4. Pursuant to sections 501, 503(a), and 504(a) of the 1974 Act (19 U.S.C. 2461, 2463(a), and 2464(a)), in order to subdivide and amend the nomenclature of existing provisions for the purposes of the GSP, I have determined, after taking into account information and advice received under section 503(a), that the HTS should be modified to adjust the original designation of eligible articles. In addition, pursuant to Title V of the 1974 Act, I have determined that it is appropriate to designate specified articles provided for in the HTS as eligible for preferential tariff treatment under the GSP when imported from designated beneficiary developing countries, and that such treatment for other articles should be terminated. I have also determined, pursuant to sections 504(a) and (c)(1) of the 1974 Act, that certain beneficiary developing countries should no longer receive preferential tariff treatment under the GSP with respect to certain eligible articles. Further, I have determined, pursuant to section 504(c)(5) of the 1974 Act, that certain countries should be redesignated as beneficiary developing countries with respect to specified previously designated eligible articles. These countries have been previously excluded from benefits of the GSP with respect to such eligible articles pursuant to section

504(c)(1) of the 1974 Act. Last, I have determined that section 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985.

5. Pursuant to sections 502(b)(7), 502(c)(7), and 504 of the 1974 Act, I have determined that it is appropriate to provide for the suspension of preferential treatment under the GSP for articles that are currently eligible for such treatment and that are imported from Liberia. Such suspension is the result of my determination that Liberia has not taken and is not taking steps to afford internationally recognized worker rights, as defined in section 502(a)(4) of the 1974 Act.

6. Section 504(c)(6) of the 1974 Act provides that section 504(c) of the 1974 Act shall not apply to any beneficiary developing country that the President determines, based on the considerations described in sections 501 and 502(c) of the 1974 Act, to be a least-developed beneficiary developing country. Accordingly, after taking into account the considerations in sections 501 and 502(c) of the 1974 Act, I have determined to designate the beneficiary developing countries of Kiribati, Mauritania, Mozambique, Tuvalu, and Vanuatu as least-developed beneficiary developing countries.

7. Section 503(c)(1) of the 1974 Act (19 U.S.C. 2463(c)(1)) provides that the President may not designate certain specified categories of import-sensitive articles as eligible articles under the GSP. Section 503(c)(1)(A) of the 1974 Act provides that textile and apparel articles that are subject to textile agreements are import-sensitive. Pursuant to section 504(a) of the 1974 Act, I am acting to modify the HTS to remove from eligibility under the GSP those articles that have become subject to textile agreements and to make certain conforming changes in the HTS.

8. Section 1204(b)(1)(C) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3004(b)(1)(C)) authorizes the President to proclaim such modifications to the HTS as are necessary or appropriate to implement such technical rectifications to the HTS as the President considers necessary. Pursuant to section 1204(b)(1)(C) of the 1988 Act, I have determined that certain technical rectifications to the HTS are necessary.

9. Section 242 of the Compact of Free Association (the Compact), entered into by the Government of the United States and the Governments of the Marshall Islands and of the Federated States of Micronesia (the freely associated states), as given effect by section 401(a) of the Compact of Free Association Act of 1985 (the Association Act) (Public Law 99–239; 99 Stat. 1770, 1838), provides that, upon implementation of the Compact, the President shall proclaim duty-free treatment for most products of the freely associated states, subject to the limitations provided in sections 503(b) and 504(c) of the 1974 Act (19 U.S.C. 2463(b) and 2464(c)). Pursuant to section 401 of the Association Act, I proclaimed duty-free treatment for such products in Proclamation No. 6030 of September 28, 1989. In order to conform the tariff treatment of goods from the freely associated states more closely with the limitations imposed under sections 503(b) and 504(c) of the 1974 Act and to provide more equitable tariff treatment for the freely associated states as afforded beneficiary developing countries under the GSP, I have determined that changes should be made in general note 3(c)(viii) to the HTS.

10. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including but not limited to Title V and section 604 of the 1974 Act, section 1204(b) of the 1988 Act, and section 401 of the Association Act, do proclaim that:

(1) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country and to remove from eligibility under the GSP those articles that have become subject to textile agreements, the HTS is modified as provided in Annex I to this proclamation.

(2) (a) In order to provide benefits under the GSP to specified designated eligible articles when imported from any designated beneficiary developing country, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annexes II(a) and II(b)(1) is modified by inserting in the parentheses the symbol "A" as provided in such Annexes to this proclamation.

(b) In order to terminate preferential tariff treatment under the GSP for articles imported from all designated beneficiary developing countries, the Rates of Duty 1-Special subcolumn for the HTS subheadings enumerated in Annex II(b)(2) is modified by deleting the symbol "A" in the parentheses.

(c) In order to provide preferential tariff treatment under the GSP to certain countries that have been excluded from the benefits of the GSP for certain eligible articles imported from such countries, following my determination that a country not previously receiving such benefits should again be treated as a beneficiary developing country with respect to such articles, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(b)(3) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A*" in parentheses, and (ii) by inserting in such subcolumn the symbol "A" in lieu thereof.

(d) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, the Rates of Duty 1-Special subcolumn for each of the HTS provisions enumerated in Annex II(b)(4) to this proclamation is modified: (i) by deleting from such subcolumn for such HTS provisions the symbol "A" in parentheses, and (ii) by inserting in such subcolumn the symbol "A*" in lieu thereof.

(3) In order to provide for the suspension of preferential treatment under the GSP for Liberia, to provide for the designation of Kiribati, Mauritania, Mozambique, Tuvalu, and Vanuatu as least-developed beneficiary developing countries, to provide that one or more countries that have not been treated as beneficiary developing countries with respect to an eligible article should be redesignated as beneficiary developing countries with respect to such article for purposes of the GSP, and to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to an eligible article for purposes of the GSP, general note 3(c)(ii) to the HTS is modified as provided in Annex III to this proclamation.

(4) In order to provide for the continuation of previously proclaimed staged reductions on Canadian goods in the HTS provisions modified in Annex I to this proclamation, effective with respect to goods originating in the territory of Canada that are entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex IV to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "CA" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof.

(5) In order to provide for the continuation of previously proclaimed staged reductions on products of Israel in the HTS subheadings modified in Annex I to this proclamation, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates specified in Annex V to this proclamation, the rate of duty in the HTS set forth in the Rates of Duty 1-Special subcolumn followed by the symbol "IL" in parentheses for each of the HTS subheadings enumerated in such Annex shall be deleted and the rate of duty provided in such Annex inserted in lieu thereof.

(6) In order to make technical rectifications in particular provisions, the HTS is modified as set forth in Annex VI to this proclamation.

(7) In order to make changes in the tariff treatment of goods from the freely associated states, general note 3(c)(viii) to the HTS is modified as set forth in Annex VII to this proclamation.

(8) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(9) (a) The amendments made by Annexes I(a), II(a), and III(a) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after May 1, 1990.

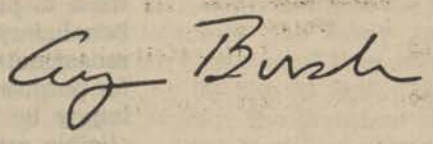
(b) The amendments made by Annexes I(b), II(b), and III(b) of this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after July 1, 1990.

(c) The amendments made by Annexes IV and V of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates indicated for the respective Annex columns.

(d) The amendments made by Annex VI of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989.

(e) The amendments made by Annex VII of this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after October 18, 1989.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of April, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fourteenth.



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Editorial note: For the President's letter to the Speaker of the House of Representatives and the President of the Senate, dated April 26, on the GSP modifications, see the *Weekly Compilation of Presidental Documents* (vol. 26, no. 17). For the Presidential memorandum of April 26 on the GSP modifications, see part VIII of this issue of the **Federal Register**.

Annex I

Notes:
1. Bracketed matter is included to assist in the understanding of proclaimed modifications.
2. The following supersedes matter now in the Harmonized Tariff Schedule of the United States (HTS). The subheadings and superior descriptions are set forth in columnar format, and material in such columns is inserted in the columns of the HTS designated "Heading/Subheading", "Article Description", "Rates of Duty 1-General", "Rates of Duty 1-Special", and "Rates of Duty 2", respectively.

(a) Effective as to articles entered, or withdrawn from warehouse for consumption, on or after May 1, 1990.

(1) Subheading 0710.22.30 is superseded by:

	[Vegetables...:]			
	[Leguminous...:]			
	[Beans...:]			
	[Not reduced...:]			
"0710.22.25	String beans (snap beans).....	7.7¢/kg	Free (A,E,IL) 6.1¢/kg (CA)	7.7¢/kg
0710.22.35	Other.....	7.7¢/kg	Free (E,IL) 6.1¢/kg (CA)	7.7¢/kg"

(2) Subheading 0811.90.60 is superseded and the following inserted in numerical sequence:

	[Fruit...:]			
	[Other:]			
"0811.90.52	Mangoes.....	17%	Free (A,E,IL) 13.6% (CA)	35%
0811.90.80	Other.....	17%	Free (E,IL) 13.6% (CA)	35%"

(3)(i) Subheading 1102.90.40 is superseded by:

	[Cereal...:]			
	[Other:]			
	"Other:			
1102.90.30	Mixtures.....	20%	Free (A,E,IL) 16% (CA)	20%
1102.90.60	Other.....	20%	Free (E,IL) 16% (CA)	20%"

(ii) Conforming change:
Additional U.S. Note 1 to chapter 11 of the HTS is modified by striking out "1104," and inserting "1104 (except mixtures classified in subheading 1102.90.30)," in lieu thereof.

(4) Subheading 2004.10.00 is superseded by:

	[Other vegetables...:]			
	"Potatoes:			
"2004.10.40	Yellow (Solano) potatoes.....	10%	Free (A,E,IL) 8% (CA)	35%
2004.10.80	Other.....	10%	Free (E,IL) 8% (CA)	35%"

(5) Subheading 2308.90.60 is superseded by:

	[Vegetable...:]			
	[Other:]			
"2308.90.50	Dehydrated marigolds.....	3%	Free (A,CA,E,IL)	20%
2308.90.80	Other.....	3%	Free (CA,E,IL)	20%"

(6)(i) Subheading 6307.90.90 is superseded by:

	[Other made up articles...:]			
	[Other:]			
	"Other:			
6307.90.87	Surgical towels; cotton towels of pile or tufted construction.....	7%	Free (B,E*,IL) 5.6% (CA)	40%
6307.90.95	Other.....	7%	Free (A,B,E*,IL) 5.6% (CA)	40%"

(ii) Conforming change:
HTS subheading 9902.57.01 is modified by striking out "6307.90.90" and by inserting "6307.90.95" in lieu thereof.

Annex I (con.)
2 of 5

(b) Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990.

(1) Subheading 1515.30.00 is superseded by:

	[Other fixed vegetable fats...:]			
	"Castor oil and its fractions:			
1515.30.20	Crude oil	3.3¢/kg	Free (A,E,IL) 2.6¢/kg (CA)	6.6¢/kg
1515.30.40	Other	3.3¢/kg	Free (A,E,IL) 2.6¢/kg (CA)	6.6¢/kg"

(2) Subheading 2001.90.40 is superseded and the following inserted in numerical sequence:

	[Vegetables,...:]			
	[Other:]			
	[Other:]			
	[Vegetables:]			
"2001.90.33	Nopalitos	12%	Free (A,E,IL) 9.6% (CA)	35%
2001.90.39	Other	12%	Free (A*,E,IL) 9.6% (CA)	35%"

(3) Subheading 2005.90.90 is superseded by:

	[Other vegetables...:]			
	[Other vegetables...:]			
"2005.90.87	Nopalitos	17.5%	Free (A,E,IL) 14% (CA)	35%
2005.90.95	Other	17.5%	Free (A,E,IL) 14% (CA)	35%"

(4)(i) Subheadings 2924.29.40 and 2924.29.45 are superseded by:

	[Carboxyamide-function compounds...:]			
	[Cyclic amides...:]			
	[Other:]			
	[Aromatic:]			
	[Other:]			
	[Other:]			
"2924.29.42	5-Bromoacetyl-2-salicylamide	13.5%	Free (A,E,IL) 8.1% (CA)	15.4¢/kg + 58%
	Other:			
2924.29.44	Products described in additional U.S. note 3 to section VI	13.5%	Free (E,IL) 8.1% (CA)	15.4¢/kg + 58%
2924.29.45	Other	3.7¢/kg + 18.1%	Free (E,IL) 2.2¢/kg + 10.8% (CA)	15.4¢/kg + 58%"

(ii) Conforming change:
HTS heading 9902.29.54 is modified by striking out "2924.29.40" and inserting "2924.29.44" in lieu thereof.

(5)(i) Subheading 2935.00.45 is superseded by:

	[Sulfonamides:]			
	[Other:]			
	[Drugs:]			
	[Other:]			
"2935.00.44	N-[5-(Aminosulfonyl)-1,3,4-thiadiazol-2-yl]acetamide	6.9%	Free (A,E,IL) 4.1% (CA)	15.4¢/kg + 45%
2935.00.46	Other	6.9%	Free (E,IL) 4.1% (CA)	15.4¢/kg + 45%"

(ii) Conforming change:
HTS heading 9902.29.86 is modified by striking out "2935.00.45" and inserting "2935.00.46" in lieu thereof.

Annex I (con.)
3 of 5

(b) (con.)

(6) Heading 3407.00.00 is superseded by:

	"Modeling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulfate):			
3407.00.20	Modeling pastes, including those put up for children's amusement	10%	Free (A,E,IL) 6% (CA)	40%
3407.00.40	Other	10%	Free (E,IL) 6% (CA)	40%"

(7) Subheadings 3503.00.20 and 3503.00.50 are superseded by:

	[Gelatin...:]			
	"Inedible gelatin and animal glue:			
3503.00.20	Valued under 88 cents per kg	1.8¢/kg + 5%	Free (E,IL) 1¢/kg + 3% (CA)	5.5¢/kg + 20%
3503.00.40	Valued 88¢ or more per kg	4.4¢/kg + 6%	Free (E,IL) 2.6¢/kg + 3.6% (CA)	15.4¢/kg + 20%
3503.00.55	Other	4.4¢/kg + 6%	Free (A,E,IL) 2.6¢/kg + 3.6% (CA)	15.4¢/kg + 20%"

(8) Subheading 3812.30.10 is superseded by:

	[Prepared rubber accelerators...:]			
	[Antioxidizing preparations...:]			
	"Containing any aromatic or modified aromatic antioxidant or other stabilizer:			
"3812.30.20	Mixtures of N,N'-diaryl-p-phenylene-diamines	3.7¢/kg + 13.6%	Free (A,E,IL) 2.2¢/kg + 8.1% (CA)	3.7¢/kg + 60%
3812.30.40	Other	3.7¢/kg + 13.6%	Free (E,IL) 2.2¢/kg + 8.1% (CA)	3.7¢/kg + 60%"

(9) Subheading 6116.10.45 is superseded by:

	[Gloves...:]			
	[Gloves...:]			
	[Other:]			
	"With fourchettes:			
6116.10.50	Specially designed for use in sports	14%	Free (A,E*) 4.2% (IL) 11.2% (CA)	25%
6116.10.60	Other	14%	Free (E*) 4.2% (IL) 11.2% (CA)	25%"

Annex 1 (con.)
4 of 5

(b) (con.)

(10) Subheadings 6216.00.25 and 6216.00.30 are superseded by:

	[Gloves...:]			
	[Impregnated...:]			
	[Other:]			
	[Without fourchettes:]			
	"Other:			
6216.00.23	Specially designed for use in sports.....	14%	Free (A,E*) 4.2% (IL) 11.2% (CA)	75%
6216.00.27	Other.....	14%	Free (E*) 4.2% (IL) 11.2% (CA)	75%
	With fourchettes:			
6216.00.29	Specially designed for use in sports.....	14%	Free (A,E*) 4.2% (IL) 11.2% (CA)	25%
6216.00.31	Other.....	14%	Free (E*) 4.2% (IL) 11.2% (CA)	25%"

(11) Subheading 6216.00.48 is superseded by:

	[Gloves...:]			
	[Other:]			
	[Of man-made fibers:]			
	"Other:			
6216.00.47	Specially designed for use in sports.....	22¢/kg + 11%	Free (A) 6.6¢/kg + 3.3% (IL) 17.6¢/kg + 8.8% (CA)	99.2¢/kg + 65%"
6216.00.49	Other.....	22¢/kg + 11%	6.6¢/kg + 3.3% (IL) 17.6¢/kg + 8.8% (CA)	99.2¢/kg + 65%"

(12)(i) Subheading 6304.99.20 is superseded by:

	[Other furnishing...:]			
	[Other:]			
	[Not knitted...:]			
	[Other:]			
	"Of vegetable fibers (except cotton):			
6304.99.25	Wall hangings of jute.....	12.8%	Free (A,E*) 2.2% (IL) 10.2% (CA)	90%
6304.99.35	Other.....	12.8%	Free (E*) 2.2% (IL) 10.2% (CA)	90%"

(ii) Conforming change:
HTS subheading 9902.57.01 is modified by striking out "6304.99.20" and inserting "6304.99.35" in lieu thereof.

(13) Subheading 6911.10.50 is superseded by:

	[Tableware,...:]			
	[Tableware...:]			
	[Other:]			
	[Other:]			
	[Other:]			
"6911.10.60	Serviette rings.....	26%	Free (A,E,IL) 20.8% (CA)	75%
6911.10.80	Other.....	26%	Free (E,IL) 20.8% (CA)	75%"

Annex I (con.)
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(b) (con.)

(14)(i) Subheading 6912.00.49 is superseded by:

[Ceramic tableware,...:]				
[Tableware...:]				
[Other:]				
[Other:]				
[Other:]				
"6912.00.46	Serviette rings	11.5%	Free (A,E,IL) 9.2% (CA)	55%
6912.00.48	Other	11.5%	Free (E,IL) 9.2% (CA)	55%"

(ii) Conforming change:
HTS subheading 6912.00.47 is renumbered as 6912.00.45.

(15) Subheading 7614.90.10 is superseded by:

[Stranded wire,...:]				
[Other:]				
"Not fitted with fittings and not made up into articles:				
7614.90.20	Electrical conductors	4.9%	Free (A,E,IL) 3.9% (CA)	35%
7614.90.40	Other	4.9%	Free (E,IL) 3.9% (CA)	35%"

(16) Subheading 8541.40.90 is superseded by:

[Diodes,...:]				
[Photosensitive semiconductor...:]				
"Other:				
8541.40.80	Optical coupled isolators	4.2%	Free (A,B,CA,E,IL)	35%
8541.40.95	Other	4.2%	Free (B,CA,E,IL)	35%"

(17) Subheading 9405.91.20 is superseded by:

[Lamps...:]				
[Parts:]				
[Of glass:]				
"Globes and shades:				
9405.91.10	Of lead crystal	14%	Free (A,E,IL) 11.2% (CA)	70%
9405.91.30	Other	14%	Free (A*,E,IL) 11.2% (CA)	70%"

Annex II

Modification in the HTS of an Article's Preferential Tariff Treatment under the GSP

(a) Effective as to articles entered, or withdrawn from warehouse for consumption, on or after May 1, 1990, for HTS subheading 1104.29.00, in the Rates of Duty 1-Special subcolumn, insert in the parentheses the symbol "A," immediately before the "E" in such subheading.

(b) Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990:

(1) For HTS subheadings 7005.29.25, 8532.29.00, 9607.11.00, and 9607.19.00, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "A," in alphabetical order.

(2) For HTS subheadings 3912.20.00, 7312.10.50, 7312.10.60, 7312.10.70, and 7312.10.90 in the Rates of Duty 1-Special subcolumn, delete the symbol "A," in parentheses.

(3) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A*" and insert an "A" in lieu thereof:

0703.20.00	5208.32.10	8426.41.00	8502.30.00
0709.90.13	5208.41.20	8426.49.00	8502.40.00
0710.21.40	5208.42.10	8426.91.00	8503.00.60
0710.80.50	5208.51.20	8426.99.00	8504.50.00
0710.80.65	5208.52.10	8428.10.00	8504.90.00
0710.80.70	5607.30.20	8428.20.00	8505.19.00
0711.40.00	6210.10.20	8428.31.00	8507.30.00
0711.90.60	6307.90.60	8428.32.00	8507.40.00
0804.50.80	6405.90.20	8428.33.00	8507.80.00
1006.30.10	6909.19.10	8428.39.00	8507.90.80
1007.00.00	7004.10.20	8428.40.00	8509.90.30
1904.90.00	7113.19.21	8428.50.00	8511.10.00
2001.10.00	7114.11.70	8428.60.00	8511.20.00
2005.10.00	7114.20.00	8428.90.00	8511.30.00
2208.90.45	7115.90.20	8431.10.00	8511.40.00
2529.22.00	7320.10.00	8431.31.00	8511.50.00
2620.19.60	7320.20.10	8431.39.00	8511.80.60
2620.20.00	7401.10.00	8431.49.10	8511.90.60
2620.30.00	7402.00.00	8470.40.00	8512.90.70
2824.10.00	7403.11.00	8471.20.00	8516.90.60
2824.20.00	7403.12.00	8471.91.00	8523.12.00
2843.21.00	7403.13.00	8473.21.00	8523.13.00
2843.29.00	7403.19.00	8473.29.00	8523.20.00
2915.21.00	7403.21.00	8473.30.80	8523.90.00
2915.39.10	7403.22.00	8473.40.20	8534.00.00
2916.39.15	7403.23.00	8473.40.40	8535.10.00
2918.22.50	7403.29.00	8501.20.40	8535.21.00
2933.19.35	7903.10.00	8501.20.50	8535.29.00
2933.90.31	7903.90.30	8501.31.40	8535.30.00
3201.90.50	8414.51.00	8501.31.50	8535.40.00
3207.40.10	8414.60.00	8501.31.80	8535.90.00
3903.19.00	8414.90.10	8501.32.60	8536.10.00
3904.10.00	8415.10.00	8501.33.60	8536.20.00
3904.22.00	8415.81.00	8501.34.60	8536.30.00
3921.13.50	8415.83.00	8501.40.50	8536.41.00
3921.90.50	8424.90.10	8501.51.40	8536.49.00
3922.10.00	8425.20.00	8501.51.50	8536.61.00
3922.20.00	8425.31.00	8501.61.00	8537.10.00
3922.90.00	8425.41.00	8501.62.00	8537.20.00
4412.19.40	8425.42.00	8501.63.00	8538.10.00
4818.10.00	8426.11.00	8501.64.00	8538.90.00
4818.20.00	8426.12.00	8502.11.00	8539.10.00
4818.30.00	8426.19.00	8502.12.00	8543.10.00
4823.90.65	8426.20.00	8502.13.00	8543.20.00
5208.31.20	8426.30.00	8502.20.00	8543.30.00

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(b)(3) (con.):

8543.90.80	8606.20.00	9018.39.00	9405.10.80
8544.20.00	8606.30.00	9021.90.80	9405.20.80
8544.41.00	8606.91.00	9025.19.00	9405.40.80
8544.51.40	8606.92.00	9028.90.00	9503.90.50
8544.60.20	8606.99.00	9113.10.00	9503.90.60
8548.00.00	9008.90.40	9403.40.60	9613.80.20
8605.00.00	9009.90.00	9403.50.60	9613.90.40
8606.10.00	9013.20.00	9403.90.10	

(4) For the following HTS provisions, in the Rates of Duty 1-Special subcolumn, delete the symbol "A" and insert an "A*" in lieu thereof:

0707.00.40	2937.92.10	7008.00.00	8529.90.50
0713.31.40	3402.90.30	7605.19.00	9006.52.10
1005.90.20	4013.10.00	7614.90.50	9019.20.00
1905.90.90	4015.11.00	8302.10.90	9022.29.40
2005.80.00	4104.10.40	8474.20.00	9026.80.60
2202.10.00	4107.21.00	8504.32.00	9031.40.00
2836.92.00	4107.29.30	8507.90.40	9405.30.00
2933.19.25	4802.51.10	8516.80.80	9603.30.40
2933.39.25	4804.31.60	8521.10.00	
2935.00.31	4818.90.00	8522.10.00	

Annex III

Modifications to General Note 3(c)(ii) of the HTS

(a) Effective as to articles entered, or withdrawn from warehouse for consumption, on or after May 1, 1990, by deleting the following HTS subheadings and countries set opposite them:

7403.11.00	Peru	7403.19.00	Peru	7403.23.00	Peru
7403.12.00	Peru	7403.21.00	Peru	7403.29.00	Peru
7403.13.00	Peru	7403.22.00	Peru		

(b) Effective as to articles entered, or withdrawn from warehouse for consumption, on or after July 1, 1990:

(1) General note 3(c)(ii)(A) is modified by deleting "Liberia" from the enumeration of independent countries.

(2) General note 3(c)(ii)(B) is modified by inserting in alphabetical order the following countries:

Kiribati
Mauritania
Mozambique
Tuvalu
Vanuatu

(3) General note 3(c)(ii)(D) is modified--

(i) by deleting the following HTS provisions and the countries set opposite these provisions:

0703.20.00	Mexico	3904.21.00	Mexico
0709.90.13	Mexico	3904.22.00	Mexico
0710.21.40	Mexico	3921.13.50	Mexico
0710.80.50	Mexico	3921.90.50	Mexico
0710.80.65	Mexico	3922.10.00	Mexico
0710.80.70	Mexico	3922.20.00	Mexico
0711.40.00	Mexico	3922.90.00	Mexico
0711.90.60	Mexico	4412.19.40	Indonesia
0804.50.80	Mexico	4818.10.00	Mexico
1006.30.10	Mexico	4818.20.00	Mexico
1007.00.00	Argentina	4818.30.00	Mexico
1515.30.00	Brazil	4823.90.65	Mexico
1904.90.00	Mexico	5208.31.20	India
2001.10.00	Mexico	5208.32.10	India
2001.90.40	Mexico	5208.41.20	India
2005.10.00	Mexico	5208.42.10	India
2005.90.90	Mexico	5208.51.20	India
2208.90.45	Mexico	5208.52.10	India
2529.22.00	Mexico	5607.30.20	Mexico
2603.00.00	Papua New Guinea	6210.10.20	Mexico
2620.19.60	Mexico	6307.90.60	Mexico
2620.20.00	Mexico	6405.90.20	Mexico
2620.30.00	Mexico	6909.19.10	Mexico
2824.10.00	Mexico	7004.10.20	Mexico
2824.20.00	Mexico	7113.19.21	Israel
2843.21.00	Mexico	7113.20.21	Israel
2843.29.00	Mexico	7114.11.70	Mexico
2915.21.00	Mexico	7114.20.00	Mexico
2915.39.10	Mexico	7115.90.20	Mexico
2916.39.15	Bahamas	7320.10.00	Mexico
2918.22.50	Bahamas	7320.20.10	Mexico
2933.19.35	Bahamas	7401.10.00	Mexico
2933.90.31	Bahamas	7402.00.00	Mexico
3201.90.50	Mexico	7403.11.00	Zambia
3207.40.10	Mexico	7403.12.00	Zambia
3903.19.00	Mexico	7403.13.00	Zambia
3904.10.00	Mexico	7403.19.00	Zambia

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(b)(3)(i) (con.):

7403.21.00	Zambia	8502.13.00	Mexico
7403.22.00	Zambia	8502.20.00	Mexico
7403.23.00	Zambia	8502.30.00	Mexico
7403.29.00	Zambia	8502.40.00	Mexico
7903.10.00	Mexico	8503.00.60	Mexico
7903.90.30	Mexico	8504.50.00	Mexico
8414.51.00	Mexico	8504.90.00	Mexico
8414.60.00	Mexico	8505.19.00	Mexico
8414.90.10	Mexico	8507.30.00	Mexico
8415.10.00	Mexico	8507.40.00	Mexico
8415.81.00	Mexico	8507.80.00	Mexico
8415.83.00	Mexico	8507.90.80	Mexico
8424.90.10	Mexico	8509.90.30	Mexico
8425.20.00	Mexico	8511.10.00	Mexico
8425.31.00	Mexico	8511.20.00	Mexico
8425.41.00	Mexico	8511.30.00	Mexico
8425.42.00	Mexico	8511.40.00	Mexico
8426.11.00	Mexico	8511.50.00	Mexico
8426.12.00	Mexico	8511.80.60	Mexico
8426.19.00	Mexico	8511.90.60	Mexico
8426.20.00	Mexico	8512.90.70	Mexico
8426.30.00	Mexico	8516.90.60	Mexico
8426.41.00	Mexico	8523.12.00	Mexico
8426.49.00	Mexico	8523.13.00	Mexico
8426.91.00	Mexico	8523.20.00	Mexico
8426.99.00	Mexico	8523.90.00	Mexico
8428.10.00	Mexico	8534.00.00	Mexico
8428.20.00	Mexico	8535.10.00	Mexico
8428.31.00	Mexico	8535.21.00	Mexico
8428.32.00	Mexico	8535.29.00	Mexico
8428.33.00	Mexico	8535.30.00	Mexico
8428.39.00	Mexico	8535.40.00	Mexico
8428.40.00	Mexico	8535.90.00	Mexico
8428.50.00	Mexico	8536.10.00	Mexico
8428.60.00	Mexico	8536.20.00	Mexico
8428.90.00	Mexico	8536.30.00	Mexico
8431.10.00	Mexico	8536.41.00	Mexico
8431.31.00	Mexico	8536.49.00	Mexico
8431.39.00	Mexico	8536.61.00	Mexico
8431.49.10	Mexico	8537.10.00	Mexico
8470.40.00	Mexico	8537.20.00	Mexico
8471.20.00	Mexico	8538.10.00	Mexico
8471.91.00	Mexico	8538.90.00	Mexico
8473.21.00	Mexico	8539.10.00	Mexico
8473.29.00	Mexico	8543.10.00	Mexico
8473.30.80	Mexico	8543.20.00	Mexico
8473.40.20	Mexico	8543.30.00	Mexico
8473.40.40	Mexico	8543.90.80	Mexico
8501.20.40	Mexico	8544.20.00	Mexico
8501.20.50	Mexico	8544.41.00	Mexico
8501.31.40	Mexico	8544.51.40	Mexico
8501.31.50	Mexico	8544.60.20	Mexico
8501.31.80	Mexico	8548.00.00	Mexico
8501.32.60	Mexico	8605.00.00	Mexico
8501.33.60	Mexico	8606.10.00	Mexico
8501.34.60	Mexico	8606.20.00	Mexico
8501.40.50	Mexico	8606.30.00	Mexico
8501.51.40	Mexico	8606.91.00	Mexico
8501.51.50	Mexico	8606.92.00	Mexico
8501.61.00	Mexico	8606.99.00	Mexico
8501.62.00	Mexico	9008.90.40	Mexico
8501.63.00	Mexico	9009.90.00	Mexico
8501.64.00	Mexico	9013.20.00	Mexico
8502.11.00	Mexico	9018.39.00	Mexico
8502.12.00	Mexico	9021.90.80	Mexico

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(b)(3)(i) (con.):

9025.19.00	Mexico	9405.20.80	Mexico
9028.90.00	Mexico	9405.40.80	Mexico
9113.10.00	Thailand	9405.91.20	Mexico
9403.40.60	Mexico	9503.90.50	Mexico
9403.50.60	Mexico	9503.90.60	Mexico
9403.90.10	Mexico	9613.80.20	Mexico
9405.10.80	Mexico	9613.90.40	Mexico

(ii) by adding in numerical sequence, the following HTS provisions and countries set opposite them:

0707.00.40	Mexico	4818.90.00	Mexico
0713.31.40	Thailand	7008.00.00	Mexico
1005.90.20	Argentina	7113.20.21	Dominican Republic
1905.90.90	Mexico	7605.19.00	Venezuela
2001.90.39	Mexico	7614.90.50	Venezuela
2005.80.00	Thailand	8302.10.90	Mexico
2202.10.00	Mexico	8474.20.00	Philippines
2603.00.00	Mexico	8504.32.00	Mexico
2836.92.00	Mexico	8507.90.40	Mexico
2933.19.25	Guatemala	8516.80.80	Mexico
2933.39.25	Brazil	8521.10.00	Thailand
2935.00.31	Yugoslavia	8522.10.00	Mexico
2937.92.10	Mexico	8529.90.50	Mexico
3402.90.30	Mexico	9006.52.10	Mexico
3904.21.00	Brazil	9019.20.00	Mexico
4013.10.00	Mexico	9022.29.40	Mexico
4015.11.00	Malaysia	9026.80.60	Mexico
4104.10.40	India	9031.40.00	Israel
4107.21.00	Argentina	9405.30.00	Thailand
4107.29.30	Argentina	9405.91.30	Mexico
4802.51.10	Mexico	9603.30.40	Mexico
4804.31.60	Mexico		

(iii) by deleting the following countries opposite the following HTS provisions:

6910.90.00	Mexico	8479.89.70	Mexico	8708.40.50	Mexico
6911.90.00	Mexico	8479.89.90	Mexico	8708.50.50	Mexico
8407.32.20	Mexico	8483.10.10	Mexico	8708.50.80	Mexico
8407.33.20	Mexico	8512.90.90	Mexico	8708.60.50	Mexico
8409.91.92	Mexico	8519.91.00	Mexico	8708.60.80	Mexico
8409.91.99	Mexico	8527.11.11	Mexico	8708.70.80	Mexico
8421.23.00	Mexico	8527.31.40	Mexico	8708.80.50	Mexico
8421.31.00	Mexico	8708.10.00	Mexico	8708.91.50	Mexico
8465.94.00	Mexico	8708.29.00	Mexico	8708.93.50	Mexico
8479.10.00	Mexico	8708.31.50	Mexico	8716.90.50	Mexico
8479.30.00	Mexico	8708.39.50	Mexico	9508.00.00	Mexico
8479.81.00	Mexico	8708.40.10	Mexico		
8479.82.00	Mexico	8708.40.20	Mexico		

(iv) by adding, in alphabetical order, the following countries opposite the following HTS subheadings:

1701.11.00	Dominican Republic
8419.19.00	Mexico
8527.11.11	Malaysia
8544.30.00	Philippines
9025.11.20	India

Annex IV

Effective with respect to goods originating in the territory of Canada which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this Proclamation, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "CA" in parentheses is deleted and the following rates duty inserted in lieu thereof on the date specified below.

HTS Subheading	January 1, 1991	January 1, 1992	January 1, 1993	January 1, 1994	January 1, 1995	January 1, 1996	January 1, 1997	January 1, 1998
0710.22.25	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
0710.22.35	5.3¢/kg	4.6¢/kg	3.8¢/kg	3¢/kg	2.3¢/kg	1.5¢/kg	0.7¢/kg	Free
0811.90.52	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
0811.90.80	11.9%	10.2%	8.5%	6.8%	5.1%	3.4%	1.7%	Free
1102.90.30	14%	12%	10%	8%	6%	4%	2%	Free
1102.90.60	14%	12%	10%	8%	6%	4%	2%	Free
1515.30.20	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
1515.30.40	2.3¢/kg	1.9¢/kg	1.6¢/kg	1.3¢/kg	0.9¢/kg	0.6¢/kg	0.3¢/kg	Free
2001.90.33	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
2001.90.39	8.4%	7.2%	6%	4.8%	3.6%	2.4%	1.2%	Free
2004.10.40	7%	6%	5%	4%	3%	2%	1%	Free
2004.10.80	7%	6%	5%	4%	3%	2%	1%	Free
2005.90.87	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2005.90.95	12.2%	10.5%	8.7%	7%	5.2%	3.5%	1.7%	Free
2924.29.42	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2924.29.44	5.4%	2.7%	Free	Free	Free	Free	Free	Free
2935.00.44	2.7%	1.3%	Free	Free	Free	Free	Free	Free
2935.00.46	2.7%	1.3%	Free	Free	Free	Free	Free	Free
3407.00.20	4%	2%	Free	Free	Free	Free	Free	Free
3407.00.40	4%	2%	Free	Free	Free	Free	Free	Free
3503.00.40	1.7¢/kg + 2.4%	0.8¢/kg + 1.2%	Free	Free	Free	Free	Free	Free
3503.00.55	1.7¢/kg + 2.4%	0.8¢/kg + 1.2%	Free	Free	Free	Free	Free	Free
3812.30.20	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
3812.30.40	1.4¢/kg + 5.4%	0.7¢/kg + 2.7%	Free	Free	Free	Free	Free	Free
6116.10.50	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6116.10.60	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.23	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.27	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.29	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.31	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
6216.00.47	15.4¢/kg + 7.7%	13.2¢/kg + 6.6%	11¢/kg + 5.5%	8.8¢/kg + 4.4%	6.6¢/kg + 3.3%	4.4¢/kg + 2.2%	2.2¢/kg + 1.1%	Free
6216.00.49	15.4¢/kg + 7.7%	13.2¢/kg + 6.6%	11¢/kg + 5.5%	8.8¢/kg + 4.4%	6.6¢/kg + 3.3%	4.4¢/kg + 2.2%	2.2¢/kg + 1.1%	Free
6304.99.25	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6304.99.35	8.9%	7.6%	6.4%	5.1%	3.8%	2.5%	1.2%	Free
6307.90.87	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6307.90.95	4.9%	4.2%	3.5%	2.8%	2.1%	1.4%	0.7%	Free
6911.10.60	18.2%	15.6%	13%	10.4%	7.8%	5.2%	2.6%	Free
6911.10.80	18.2%	15.6%	13%	10.4%	7.8%	5.2%	2.6%	Free
6912.00.46	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
6912.00.48	8%	6.9%	5.7%	4.6%	3.4%	2.3%	1.1%	Free
7614.90.20	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
7614.90.40	3.4%	2.9%	2.4%	1.9%	1.4%	0.9%	0.4%	Free
9405.91 10	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free
9405.91.30	9.8%	8.4%	7%	5.6%	4.2%	2.8%	1.4%	Free

Annex V

Effective with respect to products of Israel which are entered, or withdrawn from warehouse for consumption, on or after the dates set forth in the following tabulation.

For each of the following subheadings created by Annex I of this Proclamation, the rate of duty in the Rates of Duty 1-Special subcolumn in the HTS that is followed by the symbol "IL" in parentheses is deleted and the following rates of duty inserted in lieu thereof on the date specified below.

HTS Subheading	January 1, 1992	January 1, 1995
6116.10.50	1.4%	Free
6116.10.60	1.4%	Free
6216.00.23	1.4%	Free
6216.00.27	1.4%	Free
6216.00.29	1.4%	Free
6216.00.31	1.4%	Free
6216.00.47	2.2¢/kg + 1.1%	Free
6216.00.49	2.2¢/kg + 1.1%	Free
6304.99.25	0.7%	Free
6304.99.35	0.7%	Free

Annex VI

Technical Rectifications to the HTS

In order to make technical corrections, effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1989, the HTS is modified as follows:

(a) General note 3(c)(ii)(D) is modified by striking out "a subheading" and inserting in lieu thereof "a provision" and by striking out "the subheading numbers listed" and inserting in lieu thereof "the provisions enumerated".

(b) General note 3(c)(v) is modified by striking out, at each instance in subdivisions 3(c)(v)(C) and 3(c)(v)(D), "(vi)" and by inserting in lieu thereof "(v)".

(c) The immediately superior text to HTS subheading 3702.31.00 is modified by striking out "holes;" and by inserting in lieu thereof "holes,".

(d) For the following HTS subheadings, in the Rates of Duty 1-Special subcolumn, insert in the parentheses following the "Free" rate the symbol "B," in alphabetical order:

4504.90.20	5702.41.20	5705.00.20	8483.90.10
4823.90.60	5702.42.10	6815.10.00	8483.90.80
4823.90.80	5702.42.20	7014.00.20	8484.10.00
5608.19.20	5702.49.20	8428.32.00	8484.90.00
5702.41.10	5703.90.00	8483.40.90	

(e) For HTS subheadings 5702.49.10 and 5703.10.00, in the Rates of Duty 1-Special subcolumn, insert "Free (B)".

(f) For HTS subheading "6304.99 15" insert a "." following the sixth digit in the HTS subheading number.

(g) HTS heading 9902.29.05, subchapter II of chapter 99, is modified by striking out "20 percent by weight" from the article description and by inserting in lieu thereof "30 percent by weight".

(h) HTS heading 9902.29.07, subchapter II of chapter 99, is modified by striking out "2-[(3-Nitrophenyl)-sulfonyl]ethanol" from the article description and by inserting in lieu thereof "2-[(3-Nitrophenyl)sulfonyl]ethanol".

(i) HTS heading 9902.29.55, subchapter II of chapter 99, is modified by striking out the article description and by inserting in lieu thereof the following:

"Bis(o-tolyl)carbodiimide and 2,2',6,6'-Tetraisopropyldiphenylcarbodiimide (provided for in subheading 2925.19.20); Benzene, 2,4-diisocyanate-1,3,5-tris(1-methylethyl) homopolymer (provided for in subheading 3823.90.29); and Poly[nitrilomethanetetraaryl-nitrilo[2,4,6-tris(1-methylethyl)-1,3-phenylene]], 2,6-bis(1-methylethyl)phenyl]-omega-[[[[2,6-bis-(1-methylethyl)phenyl]amino]-methylene]amino]carbodiimide (provided for in subheading 3911.90.20)".

(j) HTS heading 9902.29.59, subchapter II of chapter 99, is modified by striking out "2,2-Bis(4-cyanatophenyl)" from the article description and by substituting in lieu thereof "2,2-Bis(4-cyanatophenyl)propane".

Annex VI (con.)
2 of 2

(k) HTS subheading 9902.71.04 is modified by striking out the reference to "7104.90.50" from the article description and inserting in lieu thereof "7116.20.50".

(l) U.S. note 4 to subchapter III of chapter 99 of the HTS is stricken. U.S. notes 5 and 6 to subchapter III of chapter 99 of the HTS are renumbered as U.S. notes 4 and 5, respectively.

(m) Renumbered U.S. note 4 to subchapter III of chapter 99 of the HTS is modified by striking out "2825.90.50" and inserting in lieu thereof "2825.90.60".

(n) The superior text to HTS subheading 9903.28.05 is modified by striking out "U.S. note 5" and inserting in lieu thereof "U.S. note 4".

(o) HTS provisions 9903.72.00 through 9903.72.44, inclusive, and the pertinent superior text thereto are stricken.

Annex VII

General note 3(c)(viii) to the HTS, setting forth tariff treatment accorded to goods imported from the freely associated states, is modified as follows:

(a) The provisions of general note 3(c)(viii) are modified by striking out "Products of" and by inserting in lieu thereof "Articles Imported from the".

(b) The provisions of general note 3(c)(viii)(B) and 3(c)(viii)(F) are each modified by striking out "the product of" at each occurrence and by inserting in lieu thereof "imported from".

(c) General note 3(c)(viii)(E) is stricken and the following new general note 3(c)(viii)(E) inserted in lieu thereof:

"(E)(1) Whenever a freely associated state--

(I) has exported (directly or indirectly) to the United States during a calendar year a quantity of an article (not excluded from duty-free treatment under subparagraph (D) of this paragraph) having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974 (as determined for purposes of section 504(c)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2464(c)(1)(A)); or

(II) has exported (either directly or indirectly) to the United States during a calendar year a quantity of an article (not excluded from duty-free treatment under subparagraph (D) of this paragraph) equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during that calendar year;

then on and after July 1 of the next calendar year the duty-free treatment provided under subparagraph (B) of this paragraph shall not apply to such article imported from such freely associated state.

(2) If in a subsequent calendar year imports of such article from such freely associated state no longer exceed the limits specified in this subparagraph, then on and after July 1 of the next calendar year such article imported from such freely associated state shall again enter the customs territory of the United States free of duty under subparagraph (B) of this paragraph."

(d) General note 3(c)(viii)(F) is redesignated as (G), and the following new subparagraph (F) is inserted in alphabetical order:

"(F) The provisions of subparagraph (E) of this paragraph shall not apply with respect to an article--

(1) imported from a freely associated state, and

(2) not excluded from duty-free treatment under subparagraph (D) of this paragraph,

if such freely associated state has entered a quantity of such article during the preceding calendar year with an aggregate value that does not exceed the limitation of the de minimis waiver applicable under section 504(d)(2) of the Trade Act of 1974, as amended (19 U.S.C. 2464(d)(2)), to such preceding calendar year."

[FR Doc. 90-10230
Filed 4-27-90; 3:48 pm]
Billing code 3195-01-C

Presidential Documents

Executive Order 12712 of April 26, 1990

Adding the Secretary of Energy to the National Space Council

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to add the Secretary of Energy to the National Space Council, it is hereby ordered that Executive Order No. 12675 shall be amended by adding a new Section 1(b)(7) that shall read "(7) The Secretary of Energy;" and by renumbering the current Sections 1(b)(7) through 1(b)(12), Sections 1(b)(8) through 1(b)(13), respectively.

THE WHITE HOUSE,
April 26, 1990.

[FR Doc. 90-10231
Filed 4-27-90; 3:48 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 55, No. 84
Tuesday, May 1, 1990

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to reflect the establishment of the position of Assistant Under Secretary for Small Community and Rural Development.

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447–6035.

SUPPLEMENTARY INFORMATION: This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

2. A new § 2.69a is added to read as follows:

§ 2.69a Delegation of authority to the Assistant Under Secretary for Small Community and Rural Development.

Pursuant to § 2.23, subject to reservations in § 2.24, and subject to policy guidance and direction by the Under Secretary, the Assistant Under Secretary for Small Community and Rural Development is delegated authority to perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Small Community and Rural Development. This authority is to be exercised only during the absence or unavailability of both the Under Secretary and the Deputy Under Secretary for Small Community and Rural Development.

Dated: April 24, 1990.
For Subpart I:

Roland R. Vautour,

Under Secretary for Small Community and Rural Development.

[FR Doc. 90–10006 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–14–M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 7903S]

Suspension and Debarment

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a final rule in the **Federal Register** on Friday, February 13, 1987, at 52 FR 4591, to add a new subpart E to the General Administrative Regulations (7 CFR part 400, subpart E—Suspension and Debarment). In that publication, the citation for the Suspension and Debarment Regulations of the U.S. Department of Agriculture (USDA) was incorrect. This notice is published to correct that error.

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: The authority citation for part 400 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR amended by revising 400.41 to read as follows:

§ 400.41 Suspension and debarment.

The provisions of 45 CFR subparts 9.4 and 404.4 shall be applicable to all FCIC suspension and debarment proceedings, except that, the authority to suspend or debar is reserved to the Manager, FCIC, or the Manager's designee.

Done in Washington, DC, on April 24, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90–10066 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV–90–144 FR]

Winter Pears Grown in Oregon, Washington, and California; Increase in Expenses for 1989–90 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the Winter Pear Control Committee (committee) established under Marketing Order No. 927 for the 1989–90 fiscal year. The expenses are increased from $4,104,779 to $4,501,022. The $396,243 increase is necessary to expand existing market development and promotion activities to

market the record large 1989 winter pear crop.

EFFECTIVE DATES: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetation Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone 202–475–3862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 927 (7 CFR part 927) regulating the handling of winter pears grown in Oregon, Washington, and California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of Oregon, Washington, and California winter pears subject to regulation under this marketing order, and approximately 1,800 winter pear producers in these three states. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and growers may be classified as small entities.

A final rule establishing expenses in the amount of $4,104,779 for the Winter Pear Control Committee for the fiscal period ending June 30, 1990, was published in the **Federal Register** on September 15, 1989 (54 FR 38201). That action also fixed an assessment rate to be levied on winter pear handlers during the 1989–90 fiscal period. In a recently conducted mail ballot, the committee unanimously voted to increase its budget of expenses from $4,104,779 to $4,501,022. The $396,243 increase will cover expanded market development and promotion activities deemed necessary to market the record large 1989 winter pear crop. The crop is now estimated to be 13,064,173 boxes, up 1,432,913 boxes from the original estimate.

No change in the assessment rate was recommended by the committee. Because of the larger than expected crop, adequate funds are available to cover the increase in expenses that may result from this action.

A proposed rule inviting comments on this action was published in the **Federal Register** on April 3, 1990 (55 FR 12368). The comment period ended April 3, 1990. No comments were received.

Based on the foregoing, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found and determined that the increased expenses are reasonable and likely to be incurred, and that such expenses will tend to effectuate the declared policy of the Act.

Approval of the increased expenses must be expedited because the committee needs, as soon as possible, to have authority to pay expenses for the additional promotion and advertising activities necessary to successfully market the larger than expected crop.

Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 927.229 is amended as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 927.229 [Amended]

Section 927.229 is amended by changing "$4,104,779" to "$4,501,022".

Dated: April 25, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–10007 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1012

[DA 90–009]

Milk in the Tampa Bay Marketing Area; Order Terminating a Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action terminates a classification provision of the Tampa Bay milk order. The action removes the provision "(including milkshake mix)" from the fluid milk product definition. Such action would classify skim milk and butterfat used in milkshake mix as Class II milk. Currently, a Class I classification applies to skim milk and butterfat in such use. Tampa Bay Independent Dairy Farmer's Association, Inc. requested the action. The termination order is needed in order for a processing plant regulated under the Tampa Bay order to be competitive with certain other Federal order plants in the processing and distribution of a milkshake mix product (Shake Ups).

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612 requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will lessen the regulatory impact of the order on certain milk handlers by reducing the payments that are required to be made for milk used in the processing of milkshake mix.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act

of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Tampa Bay marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 5, 1990 (55 FR 7718), concerning a proposed termination of a provision of the order. Interested parties were afforded opportunity to file written data, views, and arguments thereon. Two comments in support of the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, and other available information, it is hereby found and determined that the following provision of the order does not tend to effectuate the declared policy of the Act:

1. In § 1012.15, the provision "(including milkshake mix)".

Statement of Consideration

This termination action will result in a Class II classification of all skim milk and butterfat used in the processing of milkshake mix. The order now classifies as Class I milk the skim milk and butterfat in such use.

The termination of the provision "(including milkshake mix)" from the fluid milk product definition of the Tampa Bay milk marketing order was requested by Tampa Bay Independent Dairy Farmers' Association, Inc. The cooperative supplies a large portion of the market's fluid milk needs. It also supplies milk to the Flav-O-Rich plant at St. Petersburg, Florida, that is processing a milkshake mix product (Shake Ups) containing in excess of 20 percent total solids.

A Class II classification is needed for such product in order for the plant to compete with handlers regulated under the Georgia and Upper Florida milk orders and many other Federal milk orders. Skim milk and butterfat in milkshake mix containing in excess of 20 percent total solids are classified as Class II milk in most Federal milk orders while the current provision of the Tampa Bay order classifies the skim milk and butterfat in such product as Class I milk. Under these circumstances, the termination action, which provides for a Class II classification of the milkshake mix product under the Tampa Bay order, is appropriate.

Proponent filed additional comments indicating that the pool distributing plant is expected to be pooled under the Upper Florida milk order for March. However, the plant may again become regulated by the Tampa Bay order due to a change in sales. Dairymen Inc., the parent company for Flav-O-Rich (operator of the St. Petersburg plant) filed comments in support of the termination action. No comments in opposition were received.

It is hereby found and determined that 30 days' notice of the effective date hereof are impractical, unnecessary and contrary to the public interest in that:

(a) The termination is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that the action will tend to assure that handlers who operate plants fully regulated under the Tampa Bay order will not be placed at a competitive disadvantage when purchasing milk used to make milkshake mix;

(b) This termination does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning the termination.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1012

Milk marketing orders.

It is therefore ordered, That the aforesaid provision in § 1012.15 of the Tampa Bay order is hereby terminated.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

1. The authority citation for 7 CFR part 1012 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

§ 1012.15 [Amended]

2. In § 1012.15, the provision "(including milkshake mix)" is removed.

Signed at Washington, DC, on April 24, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90–10061 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 82

[Docket No. 90–060]

Poultry Affected by Salmonella Enteritidis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; notice of extension of comment period.

SUMMARY: We are further extending the comment period for an interim rule that amended our regulations concerning poultry and avian diseases by declaring *Salmonella enteritidis* serotype *enteritidis* to be an endemic disease and by imposing certain testing, movement, and other restrictions on certain chickens, eggs, and other articles from egg-type chicken flocks. This extension will provide interested persons with additional time to prepare comments on the interim rule.

DATES: Consideration will be given only to comments received on or before June 1, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88–161. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. I.L. Peterson, Staff Veterinarian, Sheep, Goat, Equine, and Poultry Diseases Staff, VS, APHIS, USDA, Room 771, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8646.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the **Federal Register** and effective on February 16, 1990 (55 FR 5576–5584, Docket No. 88–161), we amended our regulations concerning avian and poultry diseases by declaring *Salmonella enteritidis* serotype *enteritidis* to be an endemic disease and by imposing certain testing, movement, and other restrictions on certain chickens, eggs, and other articles from egg-type chicken flocks. On March 30, 1990, we published a technical amendment to the interim rule in the **Federal Register** (55 FR 11887, Docket No. 90–043), adding a sentence concerning test procedures that were inadvertently left out of the interim rule. On April 5, 1990, we published a document in the **Federal Register** extending the comment period on the interim rule until May 2, 1990 (55 FR 12631, Docket No. 90–047).

We have received 16 requests for a further extension of the comment period, to allow more time for review of the interim rule and preparation of comments concerning it. The requests were made by State animal health agencies, commercial egg producers, and poultry associations.

In response to these requests, we are extending the comment period for Docket No. 88–161 for 30 additional days. We will consider all written comments received on or before June 1, 1990. This action will allow all interested persons additional time to prepare comments.

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134a, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

Done in Washington, DC, this 25th day of April 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–10060 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90–AAL–3]

Designation of Emmonak, AK, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects final rule, Airspace Docket No. 90–AAL–3, published on page 11894 in the issue Friday, March 30, 1990, by adding true headings to the description along with the magnetic headings. On page 11894 in the third column, under Emmonak, AK [New] make the following corrections:

1. Third line change 335 ° to 352 °T/335 °M.

2. Eighth line change 165 ° to 182 °T/165 °M.

EFFECTIVE DATE: May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert C. Durand, Airspace and Procedures Specialists (AAL–531), Air Traffic Division, Federal Aviation Administration, 222 West 7th Ave., Box 14, Anchorage, AK 99513–7587, telephone (907) 271–5898.

Issued in Anchorage, Alaska, on April 19, 1990.

Henry A. Elias,

Manager Air Traffic Division.

[FR Doc. 90–10017 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM82–32–003]

Limitation on Incentive Prices for High-Cost Gas to Commodity Values; Order Denying Rehearing

Issued April 13, 1990.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; Order denying rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has decided not to make any substantive changes in the final rule adopted in Order No. 519, which terminates in part the incentive ceiling prices for first sales of high-cost gas under section 107(c)(5) of the Natural Gas Policy Act of 1978 (55 FR 6367 (Feb. 23, 1990)). However, the Commission is making certain technical changes in 18 CFR 271.703. These changes will allow for the continuation of well determinations for new wells and recompletion work in order to authorize a well determination for tight formation wells spudded or recompleted work begun after May 12, 1990.

The Commission believes that the final rule adopted in Order No. 519 fully considered and adequately protects consumer interests in reasonable gas prices and is fair to producers that relied on the incentive price rule. The motion for reconsideration and the 13 requests for rehearing filed in this docket are denied because nothing was raised on rehearing to persuade the Commission that it was in the public interest to adopt the commodity-based price cap proposed or to make any other changes in the final rule adopted.

EFFECTIVE DATE: April 13, 1990.

FOR FURTHER INFORMATION CONTACT:

Merrill Hathaway, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC; (202) 208–0457.

For Further Technical Information Contact

Marilyn L. Rand, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC; (202) 208–0585.

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Before Commissioners: Martin A. Allay, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, and Jerry J. Langdon.

ORDER NO. 519–A

On February 12, 1990, the Federal Energy Regulatory Commission (Commission) issued Order No. 519,[1] adopting a final rule terminating in part the incentive ceiling prices for first sales of high-cost gas under section 107(c)(5) of the Natural Gas Policy Act of 1978 (NGPA).[2] The termination affected all tight formation gas where the well is spudded, or recompletion work is commenced, after May 12, 1990, and all production enhancement gas where the production enhancement work is begun after that date. The Commission is making a technical change in the final rule to ensure that the definition in 18 CFR 271.703 will remain consistent with the Internal Revenue Code as the Code may be amended.

Thirteen requests for rehearing and one request for reconsideration have been filed.[3] They raise the following

[1] 55 FR 6367 (Feb. 23, 1990); III FERC Stats. & Regs. ¶ 30,879 (1990).

[2] Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988).

[3] Requests for rehearing were filed by Arco Oil and Gas Co., Arkla Exploration Co., Equitable Resources Energy Co., Independent Oil & Gas Association of West Virginia, Pennsylvania Natural Gas Association, and Parker & Parsley Petroleum Co., Independent Petroleum Association of America, T.M. Hopkins Operating Co., Undersigned Producers (Ashland Exploration, Inc., Pennzoil Exploration and Production Co. and Pennzoil Gas

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issues: (1) Whether the Commission had an adequate record before it to issue the final rule; (2) whether the Commission properly denied any retroactive effect to the rule change adopted and whether a postponement of the date of well spudding or commencement of recompletion work contained in the rule change should be made; (3) whether the Commission's decision adequately protected consumer interests and in particular whether the Commission was obligated to adopt the commodity-based price cap for section 107(c)(5) gas contained in the Notice of Proposed Rulemaking (NOPR); and (4) whether the Natural Gas Wellhead Decontrol Act of 1989 [4] or the tax laws adopted by Congress prohibit termination of the incentive ceiling price for new wells or new recompletion work.[5]

After careful review of all of the requests for rehearing and comments submitted concerning Order No. 519, the Commisson has concluded that it is appropriate to deny the requests for rehearing in all respects.[6]

The Commission concludes that the record before it was adequate to issue this final rule. The Commission properly relied on the voluminous comments submitted in response to the NOPR, as well as the public hearing held and the additional comments submitted following the court's remand. The Commission was also justified in taking official notice of undisputed facts in the public domain in reaching its final decision.[7]

The Commission properly concluded that it would be unfair and detrimental to producers that had relied on the incentive price rule to make any retroactive change in the rule. On the other hand, the Commission has afforded producers an adequate time to adjust their investment and well drilling programs to take the new rule into account.

The Commission believes that the rule adopted in Order No. 519 fully considers and adequately protects consumer interests in reasonable gas prices, at the same time that the rule helps to ensure the stable, long-term supply of gas that consumers need. Nothing was raised on rehearing to persuade the Commission that it was in any way required to adopt the commodity-based price cap proposed in the NOPR, which had previously been considered and rejected by the Commission.

Finally, the Commission is unable to find anything in the Wellhead Decontrol Act, the tax laws applicable to gas producers or the legislative histories of these enactments either to require or to justify delaying the applicable dates for the rule change, which is governed by the NGPA.

On its own motion and to allow for the continuation of well determinations for new wells and recompletion work, the Commission is changing 18 CFR 271.703 in order to authorize the well determination procedure for tight formation wells spudded or recompletion work begun after May 12, 1990.

We discuss below those arguments and facts raised on rehearing that have not already been fully answered by the discussion and analysis in Order No. 519.

A. Adequacy of the Record

When the Commission issued its NOPR in this proceeding it requested comments. Seventy-two such comments were filed, and a public hearing was held at which 16 persons presented testimony on the proposed rule. When the Commission earlier terminated this proceeding, it received requests for rehearing. Following the court remand in the *Williams* case,[8] ten comments were filed in the proceeding. Order No. 519 summarized (in appendix A) and relied on the facts contained in these submissions. The order addressed all of the major issues and arguments raised by the petitioners.

A number of petitioners have contended that the Commission's decision was not based on proper notice-and-comment procedures.[9] These petitioners charge that the decision is improperly based on materials, such as law review articles and government studies, that are outside of the record.[10] In particular they contend that the Commission must issue another NOPR in this proceeding before reaching a final decision, since the record is "stale" [11] and the parties did not have notice that the Commission might act to terminate the incentive price (as distinct from limiting it with a commodity-based cap, as discussed in the NOPR).[12]

The procedures in this rulemaking have fully complied with the notice-and-comment requirements of the Administrative Procedure Act.[13] The NOPR revealed the basis for the Commission's proposal to limit the incentive ceiling price—changes in the economy and the natural gas industry since adoption of Order No. 99—and proposed (in several alternatives) specific regulatory text that the Commission was considering. The Commission's reasoning and the scope of the proposal made it clear that the Commission was considering the adoption of a cap on the incentive price that would be based on the market prices of certain categories of oil. A number of petitioners suggested in their comments that instead of limiting the incentive price the Commission should eliminate it.[14] The Commission's decision to eliminate the incentive price for gas from wells spudded, or from recompletion work initiated, after May 12, 1990 is responsive to these comments. Therefore, this rule is clearly within the scope of the action proposed by the Commission in 1983.

The Commission recognized in Order No. 519 that some time had passed since the commencement of this proceeding and its earlier termination. Accordingly, the Commission updated the rulemaking record, which had focussed all along on general developments in the nautral gas industry and the economy, by taking notice of information about more recent general developments in the public domain. This information consisted primarily of studies by the U.S. Department of Energy's Energy Information Administration (EIA), which is entrusted by law with this data collection, analysis and dissemination function.[15] This kind of information, sometimes referred to as "legislative facts," often provides the basis for administrative decisions in broad,

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Marketing Co., and Union Pacific Resources Co.), The Kansas Power & Light Co., Panhandle Eastern Pipe Line Co. and Texas Eastern Transmission Corp., Tennessee Gas Pipeline Co., and Williams Natural Gas Co. In addition, National Association of Gas Consumers filed a request for reconsideration. These requesters are referred to herein as "petitioners."

[4] Public Law No. 101-60, 103 Stat. 157 (1989).

[5] 48 FR 7469 (Feb. 22, 1983); FERC Stats. & Regs. [Proposed Regulations 1982-1987] ¶ 32,294 (Feb. 10, 1983).

[6] The Commission also considers herein the comments on Order No. 519 submitted by letters from Senators Jeff Bingaman, J. Bennett Johnston, and Pete V. Domenici. Requests by parties seeking a "stay" of the implementation of Order No. 519 (pending Congressional action on tax credits for producers of tight formation gas) are also denied, for the same reasons that rehearing is denied.

[7] *See generally* 3 K. Davis, Administration Law Treatise section 15 (2d ed. 1980).

[8] *Williams Natural Gas Co.* v. *FERC*, 872 F.2d 438 (D.C. Cir. 1989).

[9] *E.g.*, Undersigned Producers at 13.

[10] *E.g.*, Arco at 13-16.

[11] *E.g.*, Arkla at 17; Independent Oil & Gas Association of West Virginia *et al.* at 4; Independent Petroleum Ass'n of America at 4-5; Equitable Resources at 2.

[12] *E.g.*, Arkla at 17-21; Undersigned Producers at 13-19.

[13] 5 U.S.C. 553 (1988).

[14] *See* Order No. 519, App. A, sec. C.

[15] Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.* (1982).

general-policy rulemakings like the one at issue here.[16] No petitioner has challenged the accuracy of those legislative facts on rehearing. Moreover, the Commission's decision to reject the approach proposed in 1983 was based on arguments and information in the record that have not been rendered stale or unreliable by the passage of time.

In any event, the petitioners have had an opportunity on rehearing to address the Commission's findings and conclusions in Order No. 519 before the rule has affected the availability of the incentive ceiling price. No petitioner on rehearing has outlined any specific factual showing that it would like to make in this proceeding but has been unable to make. Petitioners have only mentioned their interest in factual inquiries that would duplicate facts already in the record or not related to the decisional criteria in Order No. 519.[17] The Commission is not persuaded that opening up this proceeding for further notice and comment at this time would serve any useful purpose. The Commission is mindful of its responsibility to bring this proceeding to a conclusion as speedily as possible following the court remand,[18] and believes that its procedural actions herein have lawfully accomplished that objective.

B. Timing of the Elimination of the Incentive Ceiling Price and Protection of Consumer Interests

In Order No. 519, the Commission decided to eliminate the incentive ceiling price prospectively only, so that gas from wells spudded after May 12, 1990 and from recompletion work begun after that date would no longer qualify for the incentive ceiling price.[19] Gas sold from wells spudded on or before that date and from recompletions begun on or before that date would continue to be eligible to receive up to the incentive ceiling price. Likewise, the regulations were not changed for gas that now qualifies for the incentive ceiling price, and the Commission did not apply the elimination of the incentive ceiling price to any gas that had already been delivered.

On rehearing, petitioners make various arguments on the Commission's choice of a date for the timing of the elimination of the incentive ceiling price. No one appears satisfied with the Commission's decision on this issue. On the one hand, producers argue that the Commission should have chosen a later date to give them additional time within which to complete their on-going investment and well-drilling programs that they allege relied on the continuation of the incentive ceiling price.[20] On the other hand, pipelines and consumer interests contend that the Commission should have eliminated the incentive ceiling price earlier, even eliminating the incentive price for gas sold and delivered prior to the date of Order No. 519.

This latter group of petitioners argues that the Commission has admitted that the incentive ceiling price was no longer in the public interest since 1983 or 1985, and that a domestic supply surplus of gas existed since then that prevents a finding that the incentive ceiling price was reasonable or necessary. Therefore, these petitioners request the retroactive elimination of the incentive ceiling price for all tight formation gas or the adoption of the rule proposed in the NOPR.[21] These petitioners allege that the reliance of producers on continuation of the incentive ceiling price is unproved and if proved would have to be done on a case-by-case basis.[22] At the least, these petitioners request that the incentive ceiling price be eliminated prospectively for all flowing gas, regardless of when the wells in question were spudded or recompleted.[23]

The choice of a precise date for well spudding or the commencement of recompletion work, in order to determine the eligibility of gas to receive the incentive ceiling price, is an issue within the Commission's discretion so long as the final choice lies within certain boundaries defined by applicable legal standards and the facts in this proceeding. The Commission may not choose a date so early that it engages in retroactive rulemaking or a taking of property prohibited by law.[24] the Commission also may not choose a date so late that it allows an incentive ceiling price to continue that the record demonstrates is no longer in the public interest.

The Commission does not agree with the views of those petitioners requesting elimination of the incentive ceiling price (or adoption of a commodity-based cap) retroactive to 1983 and 1985. In *Williams*, the court found that the Commission, having itself questioned the reasonableness of leaving the incentive prices in place in a 1983 NOPR, had an obligation to address the issue. In response, we have taken a hard look at the NOPR and, on the basis of extensive findings, have rejected the NOPR's tentative conclusons. Next, to the extent the issue is whether the incentive ceiling price may be reduced or eliminated for gas already sold and delivered, the Commission has serious doubts about its authority to make such a retroactive change in its rules.[25] Moreover, based on the facts in the record before it, the Commission properly concluded in Order No. 519 that it could not eliminate the incentive ceiling price for past deliveries of gas because of the reliance on that price by producers that developed this important gas supply source in response to the Commission's initiative in Order No. 99.[26]

In Order No. 519, the Commission carefully considered the interests of consumers in receiving the lowest cost gas supply that is consistent not only with reliability and dependability of service over the long-term but also with the maintenance of a health natural gas industry. In its decision, the Commission analyzed and weighed all comments received that addressed this issue and reviewed in detail all major developments in the industry since issuance of the NOPR that have had a direct impact on consumer interests. The Commission concluded that the consumers have benefited from the NGPA section 107(c)(5) incentive ceiling price, which has worked to stimulate the development of an important new source of gas supply for domestic consumers.

Since this gas source is by definition high in cost and risky to develop, the Commission determined that the relatively high ceiling price that lawfully could be charged for this gas had remained in the public interest, although it could no longer be justified for new supplies of gas to be developed in the

[16] 2 K. Davis, Administrative Law Treatise sec. 12 (2d ed. 1979).

[17] *E.g.*, Independent Oil & Gas Ass'n of West Va. at 4–5 (alleging need for additional facts about tight formation gas production); Undersigned Producers at 18 (urging inquiry into complementary state programs, federal tax policy, recent trends in section 107(c)(5) filings, take-or-pay problems, and other subjects).

[18] *See, e.g.*, Nat'l Ass'n of Gas Consumers at 8.

[19] The Commission wishes to clarify that gas produced as a result of a workover done after May 12, 1990 in a well spudded before that date or a well which was recompleted in a tight formation on or before May 12, 1990, will continue to be eligible for the incentive price.

[20] *E.g.*, Hopkins Operating Co.; Arkla at 5–7. The producers' arguments that the Wellhead Decontrol Act or the tax laws require a later date are addressed in section C below.

[21] Williams at 3–12. These arguments are not new and were addressed at length in Order No. 519, as summarized below.

[22] *E.g.*, Tennessee at 11–14.

[23] *E.g.*, Panhandle Eastern at 9.

[24] *E.g.*, Undersigned Producers at 22–25.

[25] *See Bowen* v. *Georgetown University Hospital*, 109 S. Ct. 468 (1988).

[26] Order No. 519, sec. III.B.

future. Under the NGPA pricing scheme, the market could absorb supplies of high-cost gas so long as there was a supply of artificially low-priced gas (the so-called old gas cushion) with which the high-cost gas could be rolled in by pipelines. The Commission determined that natural gas had remained fully competitive with alternate fuels in end-use markets and that there was no evidence to support the contention that consumers had been exploited by producers of high-cost gas. Indeed, these producers had born the brunt of downward price adjustments in the wellhead gas markets experienced in the 1980s.

Pipelines and other petitioners contend on rehearing that the final rule harms consumers and violates the Commission's duty to protect them.[27] The Commission has addressed consumer interests at length in Order No. 519.[28] As we said in that order, the average wellhead price for domestic natural gas declined in the 1980s, and this decline was greatest for high-cost gas, including tight formation gas. Natural gas has been the lowest cost of all major competing fuels for residential use and has been much less expensive than heavy fuel oil for electric utility use. Gas prices to residential, industrial and electric utility consumers have declined significantly. Residential consumers have increased their demand for natural gas, which has been met in part by rapidly increasing production of tight formation gas. Therefore the Commission has fully considered the impact of the incentive ceiling price on consumers and concluded that they have benefited from the long-term, reliable gas supply that the incentive price helped develop.

On rehearing the petitioners have furnished no new support for their position, except to point to instances where pipelines have signed contracts with producers that call for the payment of the full incentive ceiling price for section 107(c)(5) gas, which is over and above the current market price for gas in general.[29] State courts have apparently taken actions to enforce such contracts.[30] These petitioners have not demonstrated that such purchase obligations have driven pipelines' weighted average cost of gas to excessive levels or made their gas sales uncompetitive in end-use markets or caused other financial distress for the pipelines or consumers. And the petitioners have not rebutted the evidence (reviewed in Order No. 519) that on the whole such high-priced contracts have been adjusted or negotiated downward in response to market conditions. While it may be true that in some individual cases producers of high-cost gas have refused to grant pricing concessions, the record confirms that in general such refusals have been balanced with low-cost purchases of old gas and purchases of other supplies of gas whose price has been responsive to market conditions.

The Commission also properly concluded that it would be unfair to producers to eliminate the incentive price for all flowing gas. In Order No. 99, the Commission offered an incentive ceiling price to producers as an incentive to motivate them to invest in development of this high-cost gas, which the Commission found was needed as an additional gas supply to supplement conventional sources. In the 1980s the producers responded to this incentive price by substantially increasing the number of wells and the volume of production of tight formation gas, as described in Order No. 519. The producers having already made substantial investments in such wells in reliance on the incentive ceiling price, the Commission cannot now fairly determine that this gas may not be needed under current market conditions and take away from producers of existing wells the very incentive that was the economic basis for their development. We believe that the Commission is obligated to keep its part of this "regulatory bargain" that was made with producers of tight formation gas.

We are not convinced by the arguments on rehearing that an extension of the May 12, 1990 date is in the public interest. The producers have not demonstrated how their on-going drilling programs cannot be adjusted to take the prospective elimination of the incentive ceiling price for new supplies of gas into account, especially since they will have had three months from the date Order No. 519 was issued in which to adjust their drilling programs. They have not shown the Commission why it is in the public interest, based on the relevant standards of the NGPA, to have new money invested and wells drilled or recompleted beginning after May 12 in reliance on the incentive ceiling price. At bottom, the concerns of certain producers objecting to the May 12 date appear to rest primarily on tax matters that are outside the scope of the Commission's authority and responsibility under the NGPA, as discussed in the next section.

C. Impact of the Wellhead Decontrol Act and the Tax Laws

In Order No. 519, the Commission relied in part on Congressional passage of the Wellhead Decontrol Act as a basis for its decision to eliminate the incentive ceiling price for new supplies of high-cost gas. The Act had expressed Congress' decision to phase out by January 1, 1993 all of the wellhead price controls on natural gas adopted pursuant to the NGPA, and to provide for a transition period to full decontrol and market determination of wellhead gas prices. The Commission concluded that, in this transition period, it was not in the public interest to encourage new supplies of gas to be developed in reliance on the incentive ceiling price, which is now scheduled to be abolished along with all the other NGPA wellhead price controls pursuant to the Wellhead Decontrol Act.

Producers have maintained that the Commission's decision to eliminate the incentive ceiling price for gas from wells spudded after May 12, 1990 is precluded by the Wellhead Decontrol Act and federal income tax laws that grant a tax credit to producers of qualifying tight formation gas.[31] The producers note that the Commission's action has the effect of denying the tax credit to gas produced from tight formation wells spudded after May 12, 1990. They cite, as support for their position that the Commission's decision is unauthorized, the provision of the Act eliminating wellhead price controls for all gas produced from wells drilled after May 15, 1991, and statements of legislators sympathetic to the continuation of the tax credits for tight formation producers. The producers argue that the Act therefore precludes the Commission from eliminating the incentive ceiling price for new wells drilled prior to May 15, 1991.

The producers also maintain that the Commission's decision is inconsistent with the tax laws and that the Commission should retain the existing incentive price rule so as to enable producers of newly developed tight formation gas to receive the tax credit until Congress has an opportunity to amend the tax laws.[32] They contend that if Congress, in the future, acts favorably to producer interests in revising the tax laws, then the eligibility to receive this credit would no longer be dependent on the maintenance by the

[27] *E.g.*, Nat'l Ass'n of Gas Consumers; Tennessee at 9–11.

[28] Order No. 519, sec. III.B.

[29] Tennessee at 9–11; Williams at 25–28.

[30] *Id.*

[31] *E.g.*, Arco at 9–13.

[32] *E.g.*, Arkla at 12–15.

Commission of an incentive ceiling price for newly developed tight formation gas. The producers emphasize the critical importance of this tax credit on their investment decisions.[33]

The Wellhead Decontrol Act does not affect the Commission's authority under the NGPA to review the incentive price rule and, if appropriate, to change it; the NGPA remains in effect. In section 107 of the NGPA, Congress authorized the Commission to prescribe incentive prices, which would be higher than the otherwise applicable ceiling prices, to the extent incentive prices were necessary to provide reasonable incentives for the production of high-cost gas. Inherent in this authority to prescribe incentive prices is the authority to change, or remove, a previously prescribed incentive price. This is the action taken in Order No. 519 in response to the *Williams* remand.

As stated above, the Wellhead Decontrol Act amends the NGPA to repeal, on January 1, 1993, all remaining price controls on the first sale of natural gas. Until that date, all provisions of the NGPA remain in effect, and decontrol occurs over a transition period only as gas supply contracts expire, terminate, or are voluntarily renegotiated, as new gas contracts are written, and, after May 15, 1991, as new gas wells are drilled on acreage subject to a contract that was in effect on July 26, 1989.

Section 2(a) of the Wellhead Decontrol Act adds a new subsection 121(f) to the NGPA that provides for the decontrol, between the date of enactment and January 1, 1993, of gas subject to new, expired, terminated, and renegotiated contracts and of gas produced from newly spudded wells. Section 2(b) provides for the continuation in effect of the wellhead pricing provisions of the NGPA by completely repealing all of title I of the NGPA (which includes section 107) only as of January 1, 1993, so that any gas that continues to be subject to regulation under title I remains so until the end of 1992 and is decontrolled only at the start of 1993. Consequently, the Wellhead Decontrol Act by its own terms leaves section 107, and the authority and responsibility delegated to the Commission to set incentive prices, intact until January 1, 1993. As a result, it also leaves intact the Commission's continuing responsibilities to conform to the standards of the NGPA, including the requirement of section 107(b) that incentive prices are to be prescribed only to the extent necessary to provide reasonable incentives. Indeed, the court in the *Williams* case found that the Commission, having cast doubts in its 1983 NOPR on the reasonableness of leaving the incentive prices intact, had an obligation to address this question.

As emphasized in its legislative history, the Wellhead Decontrol Act is the product of Congress's firm conclusion that the existing scheme of price controls had become outdated and counterproductive:

> * * * the remaining wellhead price controls constitute a scheme of subsidies and penalties for various categories of natural gas production that is uneconomic, wasteful, and ultimately harmful to consumers * * * Whatever validity the NGPA price categories may have had eleven years ago, today this system of wellhead regulation frustrates rational decisions to produce on the basis of real economic cost.[34]

Yet, Congress did not provide for immediate total decontrol but instead established a phased-in elimination of controls over a three and one-half year period. This transitional period was intended as a "lead time" for parties to arrange their contractual affairs before all price controls were lifted and to ensure that no contracts were abrogated by the legislation:

> The Committee stresses that no provision of this bill (either by its own force or through direction to any court or administrative agency) invalidates, abrogates or otherwise mandates the renegotiation of existing wellhead sales contracts * * *. This bill decontrols the first sale of natural gas, an event that has no bearing upon the continued vitality of a contract * * *. Finally, the bill provides more than three years between the date of enactment and the repeal of wellhead price controls for parties to reorder their contractual relationships in anticipation of making wellhead purchases (or sales) in a fully decontrolled environment. In consideration of the equities involved, the Committee believes that the transition period, which ends on January 1, 1993, is essential and represents sound public policy.[35]

The producers here argue that Congress, by providing a transition period before all price controls are lifted, intended to leave the existing NGPA section 107(c)(5) incentive prices in place until May 15, 1991 or January 1, 1993. However, there is no provision in the Wellhead Decontrol Act that amends section 107 of the NGPA, nor is there anything in the legislative history to indicate that Congress meant to affect section 107 or the Commission's authority under it during the transition period. Congress at the time it was considering the decontrol bills was at least constructively aware of the *Williams* remand and the fact that the Commission had squarely before it the question of whether to limit or remove the section 107(c)(5) incentive price.[36] If there had been any concern that Commission action to affect the section 107(c)(5) incentive price might in any manner be inappropriate, Congress certainly could have either directly expressed that concern in the Wellhead Decontrol Act's legislative history or included an amendment to NGPA section 107 to preclude Commission action that would change the section 107(c)(5) incentive price. Congress did neither. Consequently, there is nothing in the legislative history[37] to suggest that Congress intended to interfere with the Commission's statutory responsibility to determine whether the incentive prices meet the continuing standards contained in section 107 of the NGPA.[38]

In regard to the tax credit issue raised by producers, the Internal Revenue Code[39] provides a tax credit for tight formation gas as well as gas from geopressured brine, Devonian shale, or coal seams. Subsequent tax legislation has preserved that tax credit, which expires on January 1, 2001. In order for gas to be eligible for the tax credit, wells must be drilled after December 31, 1979 and before January 1, 1991. The code contains a special rule which defines "gas produced from a tight formation" as gas which (1) is still subject to price controls and (2) has a maximum lawful price at least 150% of the section 103 ceiling price.[40]

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[33] *E.g.*, Independent Oil & Gas Ass'n of West Va. at 7–9; Independent Petroleum Ass'n of America at 3; Arkla at 2–7.

[34] S. Rep. No. 38, 101st Cong., 1st Sess. at 4.

[35] S. Rep No. 38 at 8.

[36] Also, the Commission, in Order No. 500 (Aug. 7, 1987) (Slip Opinion at 32), which predated the *Williams* remand, explicitly stated its intention to reconsider the section 107(c)(5) incentive price:

> The Commission will aggregate the data submitted and analyze it promptly. If the information demonstrates that action under NGA section 5, or any other (such as rescinding the incentive ceiling price for tight formation gas established under NGPA section 107(c)(5)), would contribute to solving pipeline take-or-pay problems, the Commission will then consider such action.

[37] As discussed below, the legislative history of the Wellhead Decontrol Act does contain some discussion of its interaction with the tax statutes.

[38] *Cf. Nader v. C.A.B.*, 657 F.2d 453, 457 (D.C. Cir. 1981) (while Congress, in the Airline Deregulation Act, mandated that for a transitional period fares within a certain range specified by statute could not be rejected as unjust and unreasonable, this did not prevent the C.A.B. from adopting as a matter of policy an even wider zone within which it would generally not suspend fares).

[39] 26 U.S.C. 29 (1988).

[40] Since this special rule applies only to tight formation gas, the Commission's action to terminate incentive prices prospectively has no effect on the availability of the tax credit for geopressured brine, coal seam or Devonian shale gas.

Most tight formation gas lost the tax credit in 1985 or 1987, when all onshore section 102 gas and most section 103 gas was decontrolled under the NGPA. However the tax credit is still available for section 103 wells which are drilled on acreage committed or dedicated to interstate commerce on April 20, 1977, because, under the Wellhead Decontrol Act, the gas is still subject to price controls until January 1, 1993.

The final rule's elimination of the incentive price for tight formation gas from wells spudded after May 12, 1990, however, will make gas from wells on acreage committeed or dedicated to interstate commerce on April 20, 1977, where the well is spudded (or recompletion commenced) after May 12, 1990, ineligible for the tax credit because as a result of the special rule contained in the tax code there will no longer be a maximum lawful price of at least 150% of the section 103 ceiling price for this gas.

The Wellhead Decontrol Act does not address the question of the impact of Commission action under NGPA section 107(c)(5) (to determine incentive ceiling prices) on the eligibility of gas to receive the tax credit. The legislative history of the Act does, however, address the impact of the Act's decontrol provisions on this tax credit. The Senate report on the Decontrol Act [41] noted that section 29 of the Internal Revenue Code provides for tax credits of certain types of fuels which qualify for the credit under the NGPA section 503 procedures. The report concluded that approval of the Decontrol Act, which repealed the NGPA sections referenced in section 29, was "not intended * * * to reflect an adverse judgment by the Committee as to the merits of tax credits for any categories of natural gas production that might be affected by such action." See also the statement of Senator Wallop, in which he recognized that additional tax legislation would be needed to preserve the tax credit.[42]

As discussed above, however, the Commission's authority and responsibility under the NGPA, not only to set or eliminate the section 107(c)(5) ceiling price but also to determine the relevant dates for applying the rule change (*i.e.*, the cutoff date for spudding of qualifying wells), was not affected or addressed by the Wellhead Decontrol Act. The final rule rested in part on a determination that additional supplies of section 107(c)(5) gas were not needed if produced in reliance on the incentive ceiling price, which greatly exceeds current market prices. The producers have not introduced any evidence or arguments on rehearing to question this determination, or to in any way support—*under NGPA standards*—an extension of the incentive price for new supplies of gas. Rather, they argue that elimination of the incentive ceiling price will eliminate the tax credit, and that elimination of this tax credit will in turn eliminate the incentive to drill or recomplete such wells after May 12, 1990. In our judgment, the tax consequence of eliminating the incentive price is not, by itself, a valid basis under the NGPA for determining the cut-off date for that incentive price.

As stated in Order No. 519, in the NGPA Congress authorized the Commission to prescribe a higher ceiling price for high-cost gas "to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost natural gas." [43] These incentive ceiling prices would apply to any wellhead sales of natural gas that the Commission determined to be produced under conditions presenting extraordinary risks or costs.

The tax credit is a question of tax policy committed to Congress' discretion, and Congress has already acted once to extend this date. Similarly, Congress could act to change the prerequisites for the tax credit to allow tight formation gas from newly spudded wells to qualify for the credit notwithstanding the Commission's prospective elimination of the section 107(c)(5) incentive ceiling price.[44] In this manner, Congress could treat all gas under section 107(c)(5) in the same manner, and tight formation gas from newly spudded wells could receive tax credits like coal seam and other 107(c) (2)–(4) gas, regardless of whether the gas is subject to any kind of NGPA ceiling price and which ceiling price may apply.

The Commission's determination to maintain or terminate the incentive ceiling price must be made under the NGPA on economic and other grounds affecting the necessity and reasonableness of this price. Under the NGPA the timing of such a termination is integral to the termination itself—the incentive ceiling price should be removed at whatever point in time it ceases to be justified for specified supplies of gas. The tax consequence of termination of the incentive price is not a proper element of the determination of whether the incentive price is justified under the NGPA.

The *Williams* court has instructed the Commission to clarify whether it still believes the incentive price meets the appropriate NGPA standard. As discussed above, and at far greater length in Order No. 519, the Commission has concluded that, for new supplies of gas, this standard is no longer met. For this reason, we doubt our authority to continue the incentive price beyond May 12, 1990 for new supplies of gas solely

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[41] S. Rep. No. 38 at 9.

[42] Additional Views of Senator Wallop, S. Rep. No. 38 at 35:

Additional Views of Senator Wallop

Though I strongly support gas decontrol legislation, I believe S. 783 may have an unintended effect on existing law. I submit these additional views to prevent any confusion.

Section 29 of the Internal Revenue Code of 1986 provides a tax credit for certain fuels produced from non-conventional sources that are "qualified" as such under NGPA section 503. To be qualified, the gas must be produced from a "new production" well before January 1, 1991. For gas produced from tight formations, section 29 imposes an additional qualification: the gas produced must be subject to price regulation by NGPA.

Unfortunately, and quite unintentionally, the decontrol legislation currently before the committee could impact the section 29 credit in two ways.

First, the legislation removes all price controls, thus rendering tight formation gas ineligible for the section 29 credit; and second, the legislation repeals NGPA section 503, thereby removing the only mechanism used to determine whether fuels are "qualified" for the credit.

It is important that a favorable report of decontrol legislation not be construed as a statement of the committee's intent to limit the section 29 credit. In no way are the Committee's actions intended to impair the continued vaibility of the tax credit for production of fuels from non-conventional sources. Indeed, I and many other supporters of gas decontrol believe that tax incentives for production of non-conventional fuels should be maintained and extended.

That is why I, together with four distinguished members of the Committee on Energy and Natural Resources, have co-sponsored the "Domestic Energy Security Act of 1989," S. 449, which would extend the credit to fuels produced before January 1, 1988. Just as importantly, S. 449 would also remove the requirement that tight formation gas be price regulated in order to be eligible for the tax credit.

While I fully support decontrol, I do not want my support to be misconstrued.

[43] The relevant statutory language reads as follows:

Sec. 107 Ceiling Price for High-Cost Natural Gas

* * * * *

(b) *Commission authority to prescribe higher incentive prices.*—The Commission may, by rule or order, prescribe a maximum lawful price, applicable to any first sale of any high-cost natural gas, which exceeds the otherwise applicable maximum lawful price to the extent that such special price is necessary to provide reasonable incentives for the production of such high-cost natural gas.

(c) *Definition of high-cost natural gas.*—For purposes of this section, the term "high-cost natural gas" means natural gas determined in accordance with section 503 to be—

* * * * *

(5) Produced under such other conditions as the Commission determines to present extraordinary risks or costs.

15 U.S.C. 3317 (1988).

[44] Such legislation has recently been introduced in Congress by Senators Domenici, Boren, Johnston, Dole, Bingaman, Ford, Simpson, Wallop and Burns. S. 2288, Cong. Rec. S. 2640–42 (March 9, 1990)

for the purpose of providing a tax credit. That is a matter of tax policy that falls more properly within the purview of the Congress. The final rule—issued on February 12, 1990 and establishing a cut-off date of May 12, 1990—has provided a three-month period in which wells may be spudded (or recompletion commenced) before the incentive price and associated tax credit expire. And the incentive price and tax credit continue, of course, for all gas that is produced from wells which were spudded, or from recompletion work initiated, as of that cut-off date. Thus, we conclude that the record before us does not justify extension of the cut-off date beyond May 12, 1990.

D. Technical Revision of the Regulatory Text

The Commission has decided not to change the final rule adopted in Order No. 519, except to make certain non-substantive changes in 18 CFR 271.703. These changes preserve the Commission's well determination process for new wells spudded and new recompletion work begun in tight formations after May 12, 1990, Order No. 519's cut-off date for gas from new wells or recompletion work to be eligible for the incentive ceiling price. As discussed above, Congress is now considering proposed legislation to extend tax credits to tight formation gas that may no longer qualify for tax credit as a result of the Commission's action in Order No. 519. Should such legislation be adopted, the Commission desires to have available in its regulations a well determination process for tight formation gas producers, if they need this process in order to qualify for any extended tax credits Congress may enact.

The regulations, as revised by Order No. 519, define "new tight formation gas" as gas from wells spudded on or after July 16, 1979, but on or before May 12, 1990. Under this definition, tight formation gas from wells spudded after May 12, 1990, cannot qualify as "new tight formation gas" and would not be able to receive the section 503 determination necessary to take a tax credit. In order to make wells spudded on or after May 13, 1990, eligible for a tight formation determination under section 503 in the event any legislation revising the tax credit provisions is enacted, § 271.703(a) of the regulations is revised to limit the incentive ceiling price to wells where surface drilling or recompletion operations are commenced on or before May 12, 1990, and the basic definition of "tight formation gas" which existed before Order No. 519 was issued is reinstated. This revision does not affect in any way the Commission's elimination of the incentive ceiling price for new supplies of tight formation gas, as adopted in Order No. 519.

For the reasons stated above and in Order No. 519, the Commission denies all requests for rehearing and amends part 271, chapter I, part 271, title 18, Code of Federal Regulations, as set forth below.

List of Subjects in 18 CFR Part 271

Continental shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

Lois D. Cashell,

Secretary.

By the Commission. Commissioner Trabandt dissented in part with a separate statement to be issued later.

PART 271—CEILING PRICES

1. The authority citation for part 271 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1988); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1988).

2. In § 271.703, paragraphs (a), (b)(2)(ii), (b)(3)(i) and (b)(3)(ii) are revised to read as follows:

§ 271.703 Tight formations.

(a) *Maximum lawful price for tight formation gas.* (1) The maximum lawful price, per MMBtu, for the first sale of tight formation gas for which there is a negotiated contract price or a pipeline production price shall be the lesser of:

(i) The negotiated contract price or the pipeline production price, as applicable; or

(ii) 200% of the maximum lawful price specified for Subpart C—NGPA Section 103(b)(1) of part 271 in table I of § 271.101(a).

(2) The maximum lawful price does not apply to:

(i) New tight formation gas from a well the surface drilling of which began on or after May 13, 1990; and

(ii) Recompletion tight formation gas from a well the surface drilling of which was begun before July 16, 1979, if the recompletion work for the well from such designated formation was begun on or after May 13, 1990.

(b) *Definitions.* * * *

(2) * * *

(ii) Which is produced from a designated tight formation through a well the surface drilling of which began on or after July 16, 1979.

(3) * * *

(i) If such well was not completed for production from such designated formation prior to July 16, 1979, or

(ii) If such well was completed for production from such designated formation prior to July 16, 1979, such gas is produced from a completion location completed after December 27, 1983, and such gas could not have been produced from any completion location which was in existence in the wellbore on or before December 27, 1983.

* * * * *

[FR Doc. 90–9999 Filed 4–30–90; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3754–7]

Approval and Promulgation of State Implementation Plans; Casa Grande, Show Low, Safford, Flagstaff and Joseph City Group II PM–10 Areas; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the committal State Implementation Plan (SIP) for Casa Grande, Show Low, Safford, Flagstaff, and Joseph City, Arizona, Group II PM–10 areas submitted by the State on December 28, 1988. The SIP commits the State to continue monitoring for PM–10 and to submit a full SIP if a violation of the PM–10 National Ambient Air Quality Standards (NAAQS) is detected. It also commits the State to make several revisions, related to PM–10, to the existing SIP. The intended effect of this action is to assure the maintenance of the NAAQS for PM–10.

DATES: This action will be effective on July 2, 1990, unless notice is received by May 31, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region IX, Air Programs Branch, 1235 Mission Street, San Francisco, CA 94103.

Arizona Department of Environmental Quality, 2005 North Central Avenue, Phoenix, AZ 85004.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

Steven K. Body, Air Programs Branch, Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103, (415) 556–5153, (FTS) 556–5153.

SUPPLEMENTARY INFORMATION:

Background

The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM–10) on July 1, 1987 (52 FR 24634). As a result, states must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM–10 NAAQS. Group I areas have violated the PM–10 NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have moderate (20%–95%) probability of violating the PM–10 NAAQS, and must commit to monitor for PM–10 and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM–10 NAAQS, and no new control strategy requirements apply.

The Casa Grande, Show Low, Stafford, Flagstaff and Joseph City, Arizona, areas have been classified as Group II areas. On December 28, 1988, the State submitted a Committal SIP for these areas. The requirements for Group II committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM–10 areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM–10 standards, and PM–10 should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM–10 standard and the total suspended particulates (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM–10.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 $\mu g/m^3$ measured as PM–10, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in appendix L of part 51 were also revised to reflect PM–10 concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM–10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(8) Within 30 days of the notification referred to in (7), above, or within 37 months of promulgation of the PM–10 NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM–10 standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8), above, adopt and submit to EPA a PM–10 control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(10) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

Arizona Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM–10 Ambient Air Quality Standard.* The State has not adopted a revised Particulate Matter Standard for PM–10. This element will be included in a comprehensive Statewide Group III SIP revision.

(2) *Preconstruction review of major stationary sources of PM–10.* The State administers an EPA approved Prevention of Significant Deterioration (PSD) program for all areas in the State except Maricopa and Pima Counties. However, the State has not revised this program for PM–10. EPA currently retains authority for issuing PSD Authority to Construct permits for new and modified sources in these areas. A revision to the PSD rule to account for PM–10 will be included in a comprehensive State-wide Group III SIP revision.

(3) *Revised emergency episode plans.* Emergency episode plans for these Group II areas are not required due to the low measured ambient concentrations.

(4) *PM–10 monitoring networks.* There is one PM–10 monitoring site operating in each of the areas of Casa Grande, Show Low, Safford, Flagstaff and Joseph City. Each site is operated on an every sixth day schedule. The monitoring network design and coverage have been reviewed, and are approved by EPA Region IX, Air and Toxics Division.

(5) *Collection of ambient PM–10 data.* The State began monitoring for PM–10 in January 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment is contained in the Committal SIP and will be complete by August 1990.

(9) *Submittal of a revised control strategy for PM–10 if the area moves*

into nonattainment. This commitment is contained in the Committal SIP.

(10) *Enforceable schedule and milestones.* This requirement is contained in section 3 of the Committal SIP.

The State held public hearings on the Committal SIP as follows:

Area	Date	Comments
Casa Grande	Oct. 18, 1988	No comments received
Show Low.	Oct. 12, 1988	No comments received
Safford	Oct. 25, 1988	No comments received
Flag-staff.	Oct. 11, 1988	Oral and written comments received
Joseph City.	Oct. 12, 1988	Oral and written comments received

A draft Committal SIP was submitted to EPA for review prior to these hearings. EPA received the draft SIP and found it to meet the necessary requirements with some minor exceptions, which were corrected in the final submittal.

Final Action

EPA hereby approves the Committal SIP for the Casa Grande, Show Low, Safford, Flagstaff and Joseph City, Arizona SIP. The Committal SIP provides for adequate ambient air quality monitoring, and should provide the areas protection from violations of the PM–10 NAAQS.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 2, 1990.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (*See* FR 8709.)

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1990. This action may not be challenged later in proceedings to enforce its requirements. (see 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: March 28, 1990.

Daniel McGovern,

Regional Administrator.

Title 40, part 52 of the Code of Federal Regulations, subpart D is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart D—Arizona

2. A Section 52.146 is added to read as follows:

§ 52.146 Particulate matter (PM–10) Group II SIP commitments.

(a) On December 28, 1988, the Governor's designee for Arizona submitted a revision to the State Implementation Plan (SIP) for Casa Grande, Show Low, Safford, Flagstaff and Joseph City, that contains commitments, from the Director of the Arizona Department of Environmental Quality, for implementing all of the required activities including monitoring, reporting, emission inventory, and other tasks that may be necessary to satisfy the requirements of the PM–10 Group II SIPs.

(b) The Arizona Department of Environmental Quality has committed to comply with the PM–10 Group II State Implementation Plan (SIP) requirements for Casa Grande, Show Low, Safford, Flagstaff and Joseph City as provided in the PM–10 Group II SIPs for these areas.

[FR Doc. 90–10034 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[FRL–3754–6]

Approval and Promulgation of State Implementation Plans; Group III PM–10 Area; State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the Group III PM–10 State Implementation Plan for the State of Hawaii submitted on September 14, 1988. The SIP commits the State to continue monitoring for PM–10. The State of Hawaii is not considering at this time any relaxations or revison to existing total suspended particulate (TSP) control in the existing SIP. The State currently regulates TSP and PM–10 through the Prevention of Significant Deterioration (PSD) delegation agreement of August 15, 1983, between the U.S. EPA and Hawaii Department of Health.

DATES: This action will be effective on July 2, 1990, unless notice is received by May 31, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region IX, Air Programs Branch, 1235 Mission Street, San Francisco, CA 94103

Hawaii Department of Health, Five Waterfront Plaza, suite 250, 500 Ala Moana Boulevard, Honolulu, HI 96813

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Air Programs Branch, Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103, (415) 556–5153, (FTS) 556–5153.

SUPPLEMENTARY INFORMATION:

Background

The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for

each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM–10) on July 1, 1987 (52 FR 24634). As a result, states must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM–10 NAAQS. Group I areas have violated the PM–10 NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have moderate (20%–95%) probability of violating the PM–10 NAAQS, and must commit to monitor for PM–10 and submit a full SIP if a violation occurs. Groups III areas are estimated to have a low (less than 20%) probability of violating the PM–10 NAAQS, and no new control strategy requirements apply.

The State of Hawaii has been classified as a Group III area. On September 14, 1988, the State submitted a Group III SIP. The requirements for Group III SIPS, and the State's response to these requirements are described below.

EPA Requirements for Statewide Group III Committal SIPs

The following SIP requirements apply to Group III PM–10 areas:

(1) All SIPs should provide for the attainment and maintenance of the PM–10 standards, and PM–10 should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM–10 standard and the total suspended particulates (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM–10.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 ug/μ^3 measured as PM–10 and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in appendix L of part 51 were also revised to reflect PM–10 concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM–10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

State of Hawaii Submittal

The State submittal addresses EPA requirements as follows:

(1) *PM–10 Ambient Air Quality Standard:* The State has not adopted a revised Particulate Matter Standard for PM–10. In the case of Hawaii, this requirement is not necessary. The State ambient standard is required as the basis for State regulatory authority. The State regulations for control of particulate are based on TSP and there are no PM–10 control measures. Protection of PSD increments are protected as discussed below. The requirement for revision of the State ambient particulate standard is not necessary in this case and should not delay action on this SIP revision.

(2) *Preconstruction Review of Major Stationary Sources of PM–10:* The State of Hawaii is currently regulating both total suspended particulates and PM–10 through the existing permitting process. In accordance with the PSD delegation agreement of August 15, 1983 between US EPA and Hawaii Department of Health, Hawaii has authority to administer and enforce the federal PSD process and the associated PM–10 provisons. Since the PSD regulations retain the TSP increments, any new major source or major modification are reviewed for both TSP and PM–10 requirements.

(3) *Revised Emergency Episode Plans:* The emergency episode plan for the State of Hawaii does not need revision due to the low PM–10 concentrations measured.

(4) *Air Quality Surveillance Network:* The State of Hawaii operates six PM–10 samplers to measure maximum concentration and population exposure. The PM–10 network has been approved by the Region 9 Air and Toxics Division on August 19, 1988. PM–10 is monitored at the following location:

Liliha, Oahu
Pearl City, Oahu
Barbers Point, Oahu
Lihue, Kauai
Kihei, Maui
La Haina, Maui

The State held public hearings on this SIP revision as follows:

Location	Date
(1) Department of Health, 3040 Umi Street, Lihue, Kauai.	Aug. 1, 1988.
(2) Department of Health, Five Waterfront Plaza, suite 250, 5 Ala Moana Boulevard, Honolulu, Hawaii.	Aug. 2, 1988.
(3) State Building, 75 Aupuni Street, Hilo, Hawaii.	Aug. 3, 1988.
(4) First Hawaiian Bank, 74 5593 Palani Road, Kailua-Kona, Hawaii.	Aug. 4, 1988.
(5) Kahului School, 410 S. Hina Avenue, Kahului, Maui.	Aug. 5, 1988.

No adverse comments were received.

Final Action

EPA hereby approves the PM–10 Group III SIP for Hawaii. This SIP revision provides for adequate ambient air quality monitoring to provide continued documentation that the PM–10 NAAQS is protected.

Nothing in this action should be construed as permitting or allowing or establishing a precedent of any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of the Federal Register notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the

final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 2, 1990.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (*See* 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1990. This action may not be challenged later in proceedings to enforce its requirements. (*See* 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: March 26, 1990.

Daniel McGovern,

Regional Administrator.

Title 40, part 52 of the Code of Federal Regulations, subpart M is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart M—Hawaii

2. A new § 52.634 in part 52 is being added to read as follows:

§ 52.634 Particulate matter (PM–10) Group III SIP.

(a) On September 14, 1988, the Governor of Hawaii submitted a revision to the State Implementation Plan (SIP) for implementing the required monitoring activities and other tasks necessary to satisfy the requirements of the PM–10 Group III SIP.

(b) The Hawaii Department of Health has committed to meet the ongoing requirements for PM–10 Group III areas.

[FR Doc. 90–10032 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[FRL–3754–5]

Approval and Promulgation of State Implementation Plans; Battle Mountain Group II PM–10 Area; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA is approving the committal State Implementation Plan (SIP) for the Battle Mountain, Nevada, Group II PM–10 area submitted by the State on March 24, 1989. The SIP commits the State to continue monitoring for PM–10 and modifies the PSD program to protect PM–10 NAAQS. It also demonstrates that with 3 years of ambient monitoring the NAAQS has not been violated. The intended effect of this action is to assure the maintenance of the NAAQS for PM–10.

DATES: This action will be effective on July 2, 1990, unless notice is received by May 31, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the revision are available for public inspection between 8 a.m., and 4 p.m., Monday through Friday at the following offices:

Environmental Protection Agency, Region IX, Air Programs Branch, 1235 Mission Street, San Francisco, CA 94103

Nevada Division of Environmental Protection, 201 S. Fall Street, Carson City, NV 89710

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven K. Body, Air Programs Branch, Environmental Protection Agency, 1235 Mission Street, San Francisco, CA 94103, (415) 556–5153, (FTS) 556–5153.

SUPPLEMENTARY INFORMATION:

Background

The 1977 amendments to the Clean Air Act require EPA to review periodically and, if appropriate, revise the criteria on which the NAAQS for each air pollutant are based, as well as review and revise the NAAQS themselves. In response to these requirements, EPA published a notice to promulgate revised NAAQS for particulate matter under ten microns in size (known as PM–10) on July 1, 1987 (52 FR 24634). As a result, states must revise their State Implementation Plans (SIPs) to attain and maintain the new NAAQS.

To implement the new SIP requirements, all areas in the country were divided into three groups, based on the probability that each of these areas would violate the PM–10 NAAQS. Group I areas have violated the PM–10 NAAQS or have air quality data showing high (greater than 95%) probabilities of violating the NAAQS. These areas must submit full SIPs including control strategies and attainment demonstrations. Group II areas are estimated to have moderate (20%–95%) probability of violating the PM–10 NAAQS, and must commit to monitor for PM–10 and submit a full SIP if a violation occurs. Group III areas are estimated to have a low (less than 20%) probability of violating the PM–10 NAAQS, and no new control strategy requirements apply.

Battle Mountain, Nevada, has been classified as a Group II area. On March 21, 1989, the State submitted a Committal SIP for Battle Mountain. The requirements for Group II committal SIPs, and the State's response to these requirements are described below.

EPA Requirements for Group II Committal SIPs

The following SIP requirements apply to all PM–10 areas, regardless of their grouping:

(1) All SIPs should provide for the attainment and maintenance of the PM–10 standards, and PM–10 should be regulated as a criteria pollutant.

(2) Since the SIP must protect both the PM–10 standard and the total suspended particulates (TSP) increment for prevention of significant deterioration (PSD), it must trigger preconstruction review for a new or modified source which would emit significant (as defined at 40 CFR 51.166(b)(23)) amounts of either TSP or PM–10.

(3) The significant harm level for particulate matter was revised in 40 CFR 51.151 to 600 $\mu g/m^3$ measured as PM–10, and the combined sulfur dioxide-particulate matter significant harm level was deleted. In addition, the example alert, warning, and emergency levels of particulate matter in appendix L of part 51 were also revised to reflect PM–10 concentrations. Therefore, State emergency episode plans must be revised to reflect these changes.

(4) Revisions to 40 CFR part 58 set forth the requirements for design of national, State and local PM–10 air monitoring networks. The revised monitoring networks must be submitted for EPA approval. The required monitoring frequency varies with area grouping; Group I areas are required to monitor daily for at least one site in the

area of expected maximum concentration, Group II areas are required to monitor every other day at such a site, and Group III areas are required to monitor every sixth day at such a site. Monitoring frequency in Group I and Group II areas can be reduced if the reduction is supported by at least one year of data.

In addition, Committal SIPs for Group II areas must contain enforceable commitments to:

(5) Gather ambient PM–10 data, at least to an extent consistent with minimum EPA requirements and guidance.

(6) Analyze and verify the ambient PM–10 data and report 24-hour PM–10 NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(7) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM–10 NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(8) Within 30 days of the notification referred to in (7), above, or within 37 months of promulgation of the PM–10 NAAQS, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM–10 standards, and immediately notify the appropriate Regional Office.

(9) Within 6 months of the notification referred to in (8), above, adopt and submit to EPA a PM–10 control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the Committal SIP.

(10) Committal SIPs must include an enforceable schedule with appropriate milestones or checkpoints.

Nevada Submittal

The State submittal addresses EPA's requirements as follows:

(1) *PM–10 Ambient Air Quality Standard.* The State has not adopted a revised Particulate Matter Standard for PM–10. The current State TSP standard is adequate to protect the NAAQS. The current Nevada TSP standard is: 24 hour average 150 $\mu g/m^3$; annual geometric mean 75 $\mu g/m^3$. Nevada plans to adopt a PM–10 ambient standard equivalent to the NAAQS in the future.

(2) *Preconstruction review of major stationary sources of PM–10.* The State administers an EPA approved Prevention of Significant Deterioration (PSD) program for all areas in the State except Washoe and Clark Counties. The State has revised this program for PM–10.

(3) *Revised emergency episode plans.* The State is not required to revise the emergency episode plan for Battle Mountain because of the low measured PM–10 concentrations.

(4) *PM–10 monitoring networks.* There is one PM–10 monitoring site operating in Battle Mountain. The sampler is operated on an every sixth day schedule. The monitoring network design and coverage have been reviewed, and are approved by EPA Region IX, Air and Toxics Division.

(5) *Collection of ambient PM–10 data.* The State began monitoring for PM–10 in July 1985, and has committed to continue monitoring in the Committal SIP.

(6) *Reporting exceedances to EPA within 45 days.* This commitment is not contained in the Committal SIP.

(7) *Immediate notification of EPA if the area moves into nonattainment.* This commitment is not contained in the Committal SIP.

(8) *Determination of adequacy of the existing SIP.* This commitment has been completed in the Committal SIP.

(9) *Submittal of a revised control strategy for PM–10 if the area moves into nonattainment.* This commitment is contained in the Committal SIP.

(10) *Enforceable schedule and milestones.* This requirement is not contained in the Committal SIP, but since Group II milestones are complete, it is not applicable.

The State held a public hearing on the Committal SIP on May 12, 1988. No oral and written comments were received.

Final Action

EPA hereby approves the Committal SIP for the Battle Mountain, Nevada SIP. The Committal SIP provides for adequate ambient air quality monitoring, and should provide the area protection from violations of the PM–10 NAAQS.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA finds that good cause exists for making the action taken in this notice immediately effective because the implementation plan revisions are already in effect under State law or regulation. EPA's approval poses no additional regulatory burden.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of the **Federal Register** notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective July 2, 1990.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

This action has been classified as Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 2, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Dated: March 26, 1990.

Daniel McGovern,

Regional Administrator.

Title 40, part 52 of the Code of Federal Regulations subpart DD is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart DD—Nevada

2. A new § 52.1489 in part 52 is being added to read as follows:

§ 52.1489 Particulate matter (PM-10) Group II SIP commitments.

(a) On March 29, 1989, the Air Quality Officer for the State of Nevada submitted a revision to the State Implementation Plan for Battle Mountain that contains commitments, for implementing all of the required activities including monitoring, reporting, emission inventory, and other tasks that may be necessary to satisfy the requirements of the PM-10 Group II SIPs.

(b) The Nevada Division of Environmental Protection has committed to comply with the PM-10 Group II, State Implementation Plan (SIP) requirements.

[FR Doc. 90-10033 Field 4-30-90; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 272

[FRL-3761-3]

Hazardous Waste Management Program: Codification of Approved State Hazardous Waste Program for Michigan

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the United States Environmental Protection Agency (EPA) may grant final authorization to States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses part 272 of title 40 of the Code of Federal Regulations (40 CFR part 272) to codify its authorization of State programs and to incorporate by reference those provisions of State statutes and regulations that EPA will enforce under RCRA section 3008. Thus, EPA intends to codify the Michigan authorized State program in 40 CFR part 272. The purpose of today's Federal Register (FR) notice is to codify EPA's approval of recent revisions to Michigan's program.

DATES: Codification of Michigan's revised authorized hazardous waste program shall be effective July 2, 1990, unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on Michigan's codification must be received by 4:30 p.m. May 31, 1990. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 2, 1990.

ADDRESSES: Written comments should be sent to Ms. Judy Greenberg, Michigan Regulatory specialist, Office of RCRA, 5HR-JCK-13, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, telephone: (312) 886-4179 (FTS: 886-4179).

FOR FURTHER INFORMATION CONTACT: Ms. Judy Greenberg, Michigan Regulatory Specialist, Office of RCRA, 5HR-JCK-13, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, telephone: (312) 886-4179 (FTS: 886-4179).

SUPPLEMENTARY INFORMATION

Background

On February 21, 1989, EPA published in the Federal Register notice of its decision to codify Michigan's then authorized hazardous waste management program (see 54 FR 7420). Effective January 23, 1990, EPA granted authorization to Michigan for certain additional revisions to the State hazardous waste management program (see 54 FR 48608). In today's notice, EPA is codifying the currently authorized hazardous waste management program in Michigan.

EPA codifies its approval of State programs in 40 CFR part 272, and incorporates by reference therein the State statutes and regulations that EPA will enforce under section 3008 of RCRA. Although EPA has the authority to enforce authorized standards in Michigan's hazardous waste management program without codification of those standards, this effort will provide clearer notice to the public of the scope of the authorized program in Michigan.

Revisions to Michigan's and other State hazardous waste management programs are necessary when Federal statutory or regulatory authority is modified. The codification of Michigan's authorized program in subpart X of part 272 is intended to enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. For a fuller explanation of EPA's codification of Michigan's authorized hazardous waste management program, see 54 FR 7420, February 21, 1989.

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It intends to codify the decision already made to authorize Michigan's program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: January 17, 1990.

Valdas V. Adamkus,

Regional Administrator.

For the reasons set forth in the preamble, subpart X of 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Section 272.1150 is amended by revising paragraphs (a) and (b) to read as follows:

§ 272.1150 State authorization.

(a) The State of Michigan is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 *et seq.* subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), Public Law 98-616, November 8, 1984), 42 U.S.C. 6926 (c) and (g). The Federal program for which a State may receive authorization is defined in 40 CFR part 271. The State's program, as administered by the Michigan Department of Natural Resources, was

approved by EPA pursuant to 42 U.S.C. 6926(b) and part 271 of this chapter. EPA's approval of Michigan's base program was effective on October 30, 1986 (see 51 FR 36804). EPA's approval of the revisions to Michigan's base program was effective on January 23, 1990 (see 54 FR 48608).

(b) Michigan is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a Federal Register notice granting Michigan authorization.

* * * * *

3. Paragraph 272.1151 is amended by revising the introductory paragraph and paragraphs (a)(1)(ii), (a)(2)(ii), and (a)(3)(ii), (b), (c) and (d) to read as follows:

§ 272.1151 State-administered program: Final authorization.

Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Michigan has final authorization for the following elements submitted to EPA in Michigan's base program and program revision applications for final authorization and approved by EPA effective on October 30, 1986 (see 51 FR 36804) and January 23, 1990 (see 54 FR 48608).

(a) * * *

(1) * * *

(ii) Michigan Administrative Code Rules 299.9101–9208(1), 299.9208(3)–9209(1), 299.9209(4)–9409(5), 299.9210(2)–9211(1)(a), 299.9211(2)–9212(4), 299.9212(6)–(7), 299.9212(9)–9213(1)(a), 299.9213(1)(c), 299.9213(2), 299.9214(1)–(6)(b), 299.9215–9217, 299.9220, 299.9222, 299.9224–9225, 299.9301–9304(1)(b), 299.9304(1)(d)–9401(5), 299.9402, 299.9404(1), 299.9404(1)(b)–9405, 299.9407, 299.9409–9410, 299.9501–9504(1) introductory text 299.9504(1)(b)–9506, 299.9508–9508(1)(g), 299.9508(1)(i)–9521(1)(b), 299.9521(2)–9522, 299.9601–9611(2)(a), 299.9611(3)–9623(1), 299.9623(3)–9710, 299.9801–9804, 299.11001–11008 (1985 Annual *Michigan Administrative Code Supplement*, as supplemented by the April, 1988 *Michigan Register*, pages 3–107). Copies of the Michigan regulations which are incorporated by reference in this paragraph are available from the Legislative Service Bureau, Billie S. Farnum Building, 125 West Allegan, Post Office Box 30036, Lansing, Michigan 48909

(2) * * *

(ii) Michigan Administrative Code Rules 299.9521(1)(c), 299.11101–11107 (1985 Annual *Michigan Administrative Code Supplement*, as supplemented by the April, 1988 *Michigan Register*, pages 3–107).

(3) * * *.

(ii) Michigan Administrative Code Rules 299.9208(2), 299.9209(2)–(3), 299.9210(1), 299.9211(1)(b), 299.9212(5) and (8)(a), 299.9213(1) (b) and (d), 299.9214(6)(c), 299.9218–9219, 299.9221, 299.9223, 299.9226 (1985 Annual *Michigan Administrative Code Supplement*, as supplemented by the April, 1988 *Michigan Register*, pages 3–107).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Michigan Department of Natural Resources, signed by the EPA Regional Administrator on October 23, 1989, is codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(c) *Statements of Legal Authority.* The "Attorney General's Statement for Final Authorization", signed by the Attorney General of Michigan on October 25, 1985, and supplements to that Statement dated June 3, 1986, September 19, 1986, and September 7, 1988, are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(d) *Program Description.* The Program Description dated June 30, 1984, and the supplements thereto dated June 30, 1986, and September 12, 1988, are codified as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

[FR Doc. 90–10098 Filed 4–30–90; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6872]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATE: As shown in fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Fderal Center Plaza, 500 C Street SW., room 416, Washington, DC 20472 (202) 646–2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and

unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and community name	County	Community No.	Effective date
Regular Program			
New Hampshire:			
Allenstown, Town of	Merrimack	330103	May 3, 1990.
Amherst, Town of	Hillsborough	330081	Do.
Antrim, Town of	Hillsborough	330082	Do.
Auburn, Town of	Rockingham	330176	Do.
Bedford, Town of	Hillsborough	330083	Do.
Berlin, City of	Coos	330029	Do.
Brookfield, Town of	Carroll	330179	Do.
Claremont, City of	Sullivan	330154	Do.
Cornish, Town of	Sullivan	330155	Do.
Deering, Town of	Hillsborough	330085	Do.
Dover, City of	Strafford	330145	Do.
East Kingston, Town of	Rockingham	330203	Do.
Exeter, Town of	Rockingham	330130	Do.
Gorham, Town of	Coos	330032	Do.
Greenfield, Town of	Hillsborough	330090	Do.
Hampton Falls, Town of	Rockingham	330133	Do.
Hampton, Town of	Rockingham	330132	Do.
Hollis, Town of	Hillsborough	330091	Do.
Hooksett, Town of	Merrimack	330115	Do.
Jefferson, Town of	Coos	330033	Do.
Keene, City of	Cheshire	330023	Do.
Nashua, City of	Hillsborough	330097	Do.
Newbury, Town of	Merrimack	330226	Do.
Pelham, Town of	Hillsborough	330100	Do.
Plainfield, Town of	Sullivan	330162	Do.
Portsmouth, City of	Rockingham	330139	Do.
Roxbury, Town of	Cheshire	330172	Do.
Seabrook Beach Village District	Rockingham	330854	Do.
Shelburne, Town of	Coos	330037	Do.
Walpole, Town of	Cheshire	330027	Do.
Wentworth, Town of	Grafton	330078	Do.
Maine:			
Amity, Town of	Aroostook	230418	May 17, 1990.
Boothbay, Town of	Lincoln	230212	Do.
Bradford, Town of	Penobscot	230373	Do.
Books, Town of	Waldo	230253	Do.
Brunswick, Town of	Cumberland	230042	Do.
Cornish, Town of	York	230147	Do.
Cranberry Isles, Town of	Hancock	230278	Do.
Dennysville, Town of	Washington	230312	Do.
Dyer Brook, Town of	Aroostook	230424	Do.
Eagle Lake, Town of	Aroostook	230016	Do.
Eastbrook, Town of	Aroostook	230281	Do.
Freedom, Town of	Waldo	230255	Do.
Frenchboro, Town of	Hancock	230594	Do.
Gardiner, City of	Kennebec	230068	Do.
Hiram, Town of	Oxford	230094	Do.
Industry, Town of	Franklin	230348	Do.
Madrid, Town of	Franklin	230350	Do.
Mars Hill, Town of	Aroostook	230026	Do.
Mercer, Town of	somerset	230176	Do.
Merrill, Town of	Aroostook	230430	Do.
Monroe, Town of	Waldo	230260	Do.

State and community name	County	Community No.	Effective date
New Limerick, Town of	Aroostook	230432	Do.
New Vineyard, Town of	Franklin	230351	Do.
Oakfield, Town of	Aroostook	230028	Do.
Orient, Town of	Aroostook	230029	Do.
Perry, Town of	Washington	230319	Do.
Roque Bluffs, Town of	Washington	230322	Do.
Saco, City of	York	230155	Do.
Sedgewick, Town of	Hancock	230291	Do.
Smithfield, Town of	Somerset	230370	Do.
Smyrna, Town of	Aroostook	230034	Do.
Stoneham, Town of	Oxford	230340	Do.
St. Francis, Town of	Aroostook	230183	Do.
Sullivan, Town of	Hancock	230295	Do.
Thorndike, Town of	Waldo	230268	Do.
Vienna, Town of	Kennebec	230249	Do.
Wallagrass, Town of	Aroostook	230449	Do.
Waltham, Town of	Hancock	230301	Do.
West Bath, Town of	Sagadahoc	230211	Do.
Whiting, Town of	Washington	230328	Do.
New Hampshire:			
Merrimack, Town of	Hillsborough	230095	Do.
Ohio:			
Hamden, Village of	Vinton	230554	Do.

Issued: April 19, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-10059 Filed 4-30-90; 8:45 am]

BILLING CODE 6718-21-M

Federal Insurance Administration

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

DATES: The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (Firm) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMS for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Office of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (title XIII of the Housing and Urban Development Act of 1968, (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood evaluations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participating in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 65

Flood insurance floodplains.

PART 65—[AMENDED]

1. The authority citation for part 65 continues to reads as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978. E.O. 12127.

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

§ 65.4 [Amended]

State and county	Location	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Hartford (FEMA Docket No. 6976).	Town of Bloomfield	Nov. 17, 1989, Nov. 24, 1989, *The Bloomfield Journal.*	The Honorable David Baram, Mayor of the Town of Bloomfield, Hartford County, P.O. Box 343, Bloomfield, Connecticut 06002.	Nov. 10, 1989	090122 C
Flordia: Dade (Docket No. FEMA-6976).	Unincorporated areas	Dec. 1, 1989, Dec. 8, 1989, *Miami Review.*	The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 NW, 1st Street, Suite 2910, Miami, Florida 33128-1971.	Nov. 17, 1989	125098
Georgia: Fulton and DeKalb (Docket No. FEMA-6971).	City of Atlanta	Oct. 19, 1989, Oct. 26, 1989, *Atlanta Journal-Constitution.*	The Honorable Andrew Young, Mayor, City of Atlanta, 55 Trinity Avenue, SW., Atlanta, Georgia 30335-0325.	Oct. 6, 1989	135157
Illinois: Du Page (Docket No. FEMA-6986).	Unincorporated areas	Oct. 19, 1989, Oct. 26, 1989, *Daily Journal.*	The Honorable Jack T. Kneupfer, Chairman, Du Page County Board, 421 County Farm Road, Wheaton, Illinois 60187.	Sept. 27, 1989	170197
Louisiana: Lafourche (FEMA Docket No. 6971).	Town of Golden Meadow	Sept. 28, 1989, Oct. 5, 1989, *The Daily Comet.*	The Honorable Jervis Autin, Mayor of the Town of Golden Meadow, 313 North Bayou Drive, Golden Meadow, Louisiana 70357.	Sept. 19, 1989	225196 B
Louisiana: Unincorporated areas (FEMA Docket No. 6972).	Lafourche Parish	Sept. 28, 1989, Oct. 5, 1989, *The Daily Comet.*	The Honorable Vernon F. Galliano, President of the Lafourche Parish Council, P.O. Drawer 5548, Thibodaux, Louisiana 70302.	Sept. 8, 1989	225202 C
Louisiana: Plaquemines Parish (FEMA Docket No. 6980).	Unincorporated areas	Jan. 12, 1989, Jan. 19, 1990, *Plaquemines Gazette.*	The Honorable Luke A. Petrovich, Plaquemines Parish Government, P.O. Box 61, Point-A-La-Hache, Louisiana 70082.	Dec. 15, 1989	220139 B

Issued: April 19, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-10054 Filed 4-30-90; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 65

[Docket No. FEMA-6988]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

DATES: These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator reconsider the changes. These modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities.

§ 65.4 [Amended]

State and county	Location	Date and name of newspaper where notice was published	Chief executive offficer of community	Effective date of modification	Community No.
Maryland: Anne Arundel	Unincorporated areas	April 5, 1990, April 12, 1990, *The Capital.*	Mr. James O. Lighthizer, Anne Arundel County, Executive, 44 Calvert Street, Annapolis, Maryland 21401.	March 7, 1990	240008
New York: Saratoga	Town of Saratoga	March 21, 1990, March 28, 1990, *The Saratogian.*	The Honorable Robert Hathaway, Supervisor of the Town Saratoga, Saragoga County, 30 Ferry Street, P.O. Box 35, Schuylerville, New York 12871.	March 14, 1990.	360727 B
Tennessee	City of Nashville and Davidson County.	April 6, 1990, April 13, 1990, *Tennessean Nashville Banner.*	The Honorable William H. Boner, Mayor, City of Nashville and Davidson County, Metro Courthouse, Room 106, Nashville, Tennessee 37201.	March 27, 1990.	470040

Issued: April 19, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90–10055 Filed 4–30–90; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevation for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is ruled in accordance with section 110 of the Flood Disaster Protection Action 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR part 60. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100 YEARS) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
CALIFORNIA	
Lake Elsinore (city), Riverside County (FEMA docket No. 6973)	
San Jacinto River:	
Approximately 850 feet downstream of Lakeshore Dirve	*1,267
Just downstream of Lakeshore Drive	*1,271
Approximately 200 feet upstream of Lakeshore Drive	*1,272
Approximately 350 feet downstream of Interstate Highway 15	*1,274
Approximately 200 feet upstream of Interstate Highway 15	*1,275
Approximately 9,400 feet upstream of Interstate Highway 15	*1,308
Maps are available for review at City Hall, 130 South Main Street, Lake Elsinore, California.	
COLORADO	
City and County of Denver (FEMA docket No. 6977)	
Cherry Creek:	
Approximately 500 feet upstream of Centennial Footbridge	*5,160
Upstream side of Burlington Northern Railroad Bridge, approximately 1,740 feet downstream of Blake Street Bridge	*5,181
Lakewood Gulch:	
Approximately 350 feet downstream of Canosa Court	*5,197
Upstream side of Canosa Court	*5,199
Lakewood Gulch Overflow:	
At mouth, downstream of Associated Railroad Bridge	*5,197
Approximately 430 feet downstream of Decatur Street	*5,199
Harvard Gulch:	
At mouth	*5,255
West Harvard Gulch:	
At mouth	*5,260
Approximately 430 feet upstream of mouth	*5,264
Sanderson Gulch:	
At mouth	*5,241
Approximately 390 feet upstream of mouth	*5,244
South Platte River:	
Approximately 570 feet downstream of Franklin Street Bridge	*5,137
Downstream side of Franklin Street Bridge	*5,141
Downstream side of westbound exit from Interstate Highway 70 Bridge	*5,149
Approximately 170 feet upstream of East 38th Street Bridge	*5,152
Approximately 150 feet upstream of East 31st Street Bridge	*5,157
Upstream side of Fox Street Viaduct	*5,164
Upstream side of West 20th Street Viaduct	*5,170
Downstream side of westbound Speer Boulevard	*5,183
Centerline of northbound Interstate Highway 25 Bridge	*5,191
Upstream side of West 13th Avenue Bridge	*5,198
Upstream side of eastbound West 6th Avenue Bridge	*5,207
Upstream side of West Alameda Avenue Bridge	*5,223
Downsteam side of West Mississippi Avenue Bridge	*5,235
Upstream side of West Florida Avenue Bridge	*5,242
Upstream side of West Evans Avenue Bridge	*5,254
Approximately 1,550 feet downstream of centerline of West Dartmouth Avenue Bridge	*5,263
South Platte River, West Bank Split Flow (56th Avenue upstream to 47th Avenue):	
Just upstream of Franklin Street	*5,131
At East 51st Avenue	*5,138
At Platte River Drive West	*5,139
At Pennsylvania Street	*5,145
South Platte River, West Bank Split Flow (West Jewell Avenue upstream to West Iliff Avenue):	
At West Evans Avenue	*5,252
Along Kalamath Street, approximately 250 feet upstream of West Warren Avenue	*5,253
Approximately 400 feet upstream of West Iliff Avenue	*5,254
South Platte River, East Bank Split Flow (Lawrence Street upstream to 8th Avenue):	
At Lawrence Street	*5,191
At Colfax Avenue	*5,192
At West 14th Avenue	*5,193
At West 12th Avenue	*5,196
Intersection of Wyandot Street and West 6th Avenue	*5,201
Weir Gulch:	
Approximately 500 feet downstream of West Alameda Avenue	*5,325
Approximately 220 feet upstream of West Alameda Avenue	*5,333
Approximately 120 feet downstream of West Virginia Avenue	*5,340
Approximately 200 feet downstream of West Custer Place	*5,348
Approximately 120 feet upstream of South Wolff Street	*5,355
Approximately 370 feet downstream of Sheridan Boulevard	*5,363
At Sheridan Boulevard	*5,374
Maps are available for review at the Department of Public Works, Wastewater Management Division, City and County of Denver, 3840 York Street, Building G, Denver, Colorado.	
LOUISIANA	
Iberia Parish (unincorporated areas) (FEMA docket No. 6977)	
Vermilion Bay: South of the Southern-Pacific Railroad, east of State Route 329 and west of State Route 83	
Maps available for inspection at the Iberia Parish Government Building, 300 Iberia Street, Suite 400, New Iberia, Louisiana.	
MONTANA	
Carbon County (unincorporated areas) (FEMA docket No. 6977)	
Rock Creek:	
Approximately 3,400 feet downstream of Meeteese Foot Bridge	*5,630
Approximately 300 feet upstream of confluence with West Fork	*5,760
Approximately 950 feet downstream of confluence of Rock Creek Ditch	*5,850
Approximately 250 feet downstream of confluence of Wapel Ditch	*5,920
Approximately 5,880 feet upstream of Piney Dell Foot Bridge	*6,258
Maps are available for review at the Carbon County Courthouse Annex, 5 East Ninth Street, Red Lodge, Montana.	
NORTH CAROLINA	
Pitt County (unincorporated areas) (FEMA docket No. 6977)	
Tar River:	
About 1.1 miles downstream of confluence of Bear Creek	*10
About 5.1 miles upstream of confluence of Chicod Creek	*18
About 4.1 miles upstream of confluence of Kitten Creek	*33
Middle Swamp Creek:	
At mouth	*44
About 2.32 miles upstream of U.S. Route 13	*60
Contentnea Creek:	
At mouth	*20
At confluence of Little Contentnea Creek	*30
Little Contentnea Creek:	
At mouth	*30
About 1.0 mile upstream of County Route 1233	*88
Maps available for inspection at the Engineering Department, 1717 West 5th Street, Greenville, North Carolina.	
SOUTH DAKOTA	
Brown County (unincorporated areas) (FEMA docket No. 6973)	
Maple River:	
Approximately 1,075 feet downstream of U.S. Highway 281	*1,362
Just upstream of U.S. Highway 281	*1,363
Approximately 2,950 feet downstream of Main Street, Town of Frederick	*1,366
Approximately 350 feet downstream of County Road No. 5	*1,369
Approximately 1,450 feet upstream of County Road No. 5	*1,371
Maps are available for review at the County Auditor's Office, 25 Market Street, Aberdeen, South Dakota.	
Frederick (town), Brown County (FEMA docket No. 6973)	
Maple River:	
Approximately 2,950 feet downstream of Main Street	*1,366
Approximately 2,000 feet downstream of Main Street	*1,367
Approximately 750 feet downstream of Main Street	*1,368
Just downstream of County Road No. 5	*1,369
Maps are available for review at the Office of Finance, Town of Frederick, Municipal Office Building, Frederick, South Dakota.	
TENNESSEE	
Sullivan County (unincorporated areas) (FEMA docket No. 6979)	
Horse Creek:	
At mouth	*1,186
Just downstream of Ridge Road	*1,212
Just upstream of Ridge Road	*1,214
Kendrick Creek:	
At mouth	*1,208
About 530 feet downstream of Rock Springs Road	*1,214
Holston River:	
About .40 mile downstream of CSX railroad	*1,172
About 790 feet upstream of CSX railroad	*1,174
North Fork Holston River:	
About 900 feet downstream of CSX railroad	*1,160
About .35 mile upstream of Carters Valley Road	*1,205
South Fork Holston River:	
About .64 mile downstream of Plant Access Road	*1,194
About .80 mile upstream of CSX railroad	*1,204
About 1.73 miles upstream of CSX railroad	*1,208
South Fork Holston River Sluice:	
About 1.45 miles downstream of Wilcox Drive	*1,182
About .57 mile upstream of Moreland Drive	*1,198
Maps available for inspection at the Sullivan County Courthouse, Planning and zoning Department, Blountville, Tennessee.	
TEXAS	
Bellaire (city), Harris County (FEMA docket No. 6979)	
Brays Bayou (D100-00-00):	
At the upstream side of Southern Pacific Railroad	*53
At the downstream side of South Rice Avenue	*56
Maps available for inspection at the City Hall, 7008 South Rice Avenue, Bellaire, Texas.	
Deer Park (city), Harris County (FEMA docket No. 6977)	
Tributary 1.78 to Willoow Springs Bayou (B112-02-00):	
Approximately 1,600 feet upstream of Canada Street	*25
Approximately .4 mile upstream of Pasadena Boulevard	*27
Tucker Bayou:	
Approximately 1,700 feet downstream of Tidal Road	*12

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD). Modified
Approximately .5 mile upstream of Tidal Road	*12
Patrick Bayou: Approximately 1.5 mile downstream of State Route 225	*12
Maps available for inspection at 710 E. St. Augustine, Deer Park, Texas.	
Fort Bend County Municipal Utility District No. 41 (FEMA docket No. 6977)	
Red Gully:	
At the downstream corporate limits	*80
At upstream corporate limits	*81
Maps available for inspection at the Fort Bend County Courthouse, Richmond, Texas.	
Harris County (unincorporated areas) (FEMA docket No. 6977)	
Brays Bayou (D100-00-00):	
At the Southern Pacific Railroad	*81
Approximately 1,100 feet upstream of Addicks Clodine Road	*86
Tributary 29.16 to Brays Bayou (D132-00-00):	
At confluence with Brays Bayou (D100-00-00)	*85
At Southern Pacific Railroad	*85
Greens Bayou (P100-00-00):	
Approximately 400 feet upstream of Tidwell Road	*35
Approximately 350 feet upstream of Millbridge Road	*130
Stream P155-00-00:	
At confluence with Greens Bayou (P100-00-00)	*79
Approximately 1.4 miles upstream of confluence with Greens Bayou (P100-00-00)	*79
Stream P156-00-00:	
At confluence with Greens Bayou (P100-00-00)	*82
Approximately 1.2 miles upstream of confluence with Greens Bayou (P100-00-00)	*82
North Fork Greens Bayou (P145-00-00):	
Approximately 650 feet upstream of Rankin Road	*94
Approximately 1,900 feet upstream of Rankin Road	*94
Tributary 32.23 to Greens Bayou (P146-00-00):	
At the confluence with Greens Bayou (P100-00-00)	*95
Approximately 1,900 feet upstream of the confluence with Greens Bayou (P100-00-00)	*95
Tributary 34.60 to Greens Bayou (P148-00-00):	
At confluence with Greens Bayou (P100-00-00)	*103
Approximately 300 feet upstream of confluence with Greens Bayou (P100-00-00)	*103
Tributary 26.64 to Greens Bayou (P140-00-00):	
At the downstream side of Aldin-Westfield Road	*82
Approximately 1,500 feet upstream of Farrell Road	*99
Halls Bayou (P118-00-00):	
Approximately 200 feet upstream of Little York Road	*61
At Mosielee Road	*102
Turkey Creek (A119-00-00):	
Approximately 1,350 feet upstream of Beamer Road	*27
At the upstream corporate limit	*30
Halls Road Ditch (A120-00-00):	
At Dixie Farm Road	*29
Approximately 2,200 feet downstream of Kingspoint Road	*38
Cypress Creek (K100-00-00):	
At the downstream side of House Hahl Road	*149
Approximately 1.4 miles upstream of the confluence of channel (K159-01-00)	*153
Channel A (K159-00-00):	
At the confluence with Cypress Creek (K100-00-00)	*150
Approximately 1,300 feet upstream of Mason Road	*155
Channel D (K159-01-00):	
At the confluence with Channel A (K159-00-00)	*153
Approximately 0.9 mile upstream of the confluence with Channel A (K159-00-00)	*165
Tributary 37.1 to Cypress Creek (K152-00-00):	
Approximately 1,300 feet upstream of confluence with Cypress Creek (K100-00-00)	*149
Approximately 1.2 miles upstream of the confluence with Cypress Creek (K100-00-00)	*154
Dry Creek (K145-00-00):	
Approximately 550 feet downstream of Jarvis Road	*142
Approximately 300 feet downstream of Mueschke Road	*155
Garners Bayou (P130-00-00):	
Approximately 500 feet upstream of confluence of Williams Gully (P130-02-00)	*58
At downstream side of Old Humble Road	*66
Tributary 3.19 to Garners Bayou (P130-03-00):	
At the confluence with Garners Bayou (P130-00-00)	*62
Approximately 1,300 feet upstream of the confluence with Garners Bayou (P130-00-00)	*62
Taylor Gully (G103-80-03.1):	
At Hamblen Road	*65
Approximately 0.5 mile upstream of Rustling Elvis Drive	*72
Turkey Creek (K111-00-00):	
Approximately 0.9 mile upstream of the confluence with Cypress Creek (K100-00-00)	*76
Approximately 1,300 feet upstream of North Vista Road	*106
Langham Creek (U100-00-00):	
Approximately 1,000 feet downstream of Addicks-Satsuma Road	*108
Approximately 1.2 miles upstream of West Little York Road	*117
Horsepen Creek (U106-00-00):	
At the confluence with Langham Creek (U100-00-00)	*107
Approximately 2.4 miles upstream of State Route 6	*139
Tributary 10.08 to Clear Creek (A111-00-00):	
At the upstream side of 2nd crossing of Forest Park Cemetery Road	*11
Approximately 0.8 mile upstream of Jasmine Road	*25
Big Island Slough (B106-00-00):	
Approximately 1,400 feet downstream of Southern Pacific Railroad	*16
Approximately 2,000 feet upstream of Southern Pacific Railroad	*17
East Fork San Jacinto River:	
Approximately 2,000 feet downstream of the confluence with Orton Gully (just upstream of the Harris-Montgomery County boundary)	*70
Approximately 0.6 mile upstream of the confluence of Orton Gully	*76
Maps available for inspection at 301 Main Street, Houston, Texas.	
Houston (city), Harris County (FEMA docket No. 6977)	
Turkey Creek (A-119-00-00):	
Just upstream of Ryewater Drive	*30
Approximately 400 feet downstream of Sagedowne Lane	*30
Halls Road Ditch (A-120-00-00):	
At Hall Road	*35
Approximately 400 feet downstream of Fuqua	*41
Garners Bayou (P-130-00-00):	
Just downstream of U.S. Route 59	*76
Approximately 400 feet upstream of west feeder of U.S. Route 59	*77
Approximately .7 mile upstream of Lee Road	*88
Spring Branch (W140-00-00):	
Approximately 150 feet upstream of Long Point Road	*79
At Campbell Road	*81
North Fork Greens Bayou (P145-00-00):	
At the confluence with Greens Bayou	*94
Approximately 2,850 feet upstream of Rankin Road	*94
Brays Bayou (D100-00-00):	
Approximately 1,200 feet upstream of confluence with Buffalo Bayou	*12
Approximately 1.07 mile upstream of Eldridge Road	*83
Tributary 26.20 to Brays Bayou (D129-00-00):	
At confluence with Brays Bayou	*80
Approximately 1,200 feet upstream of Piping Rock	*85
Greens Bayou (P100-00-00):	
Approximately 800 feet upstream of confluence of Tributary 26.64 to Greens Bayou	*74
Approximately 400 feet upstream of Northborough Drive	*95
Halls Bayou (P188-00-00):	
Approximately 200 feet upstream of F.M. 527	*33
Approximately .4 mile upstream of Sunnywood Street	*85
Tributary 19.77 to Brays Bayou:	
At confluence with Brays Bayou	*69
Upstream side of South Gessner Road	*69
Tributary 20.86 to Brays Bayou:	
At confluence with Brays Bayou	*70
Approximately 100 feet downstream of Beechnut Street	*70
Tributary 20.90 to Brays Bayou:	
At confluence with Brays Bayou	*70
Approximately 1,300 feet upstream of Club Creek Drive	*70
Tributary 21.95 to Brays Bayou:	
At confluence with Brays Bayou	*72
Approximately 200 feet upstream of Boone Road	*72
Tributary 22.69 to Brays Bayou (D124-00-00):	
At confluence with Brays Bayou	*74
Approximately 700 feet upstream of Southern Pacific Railroad	*74
Tributary 23.53 to Brays Bayou (D126-00-00): At confluence with Brays Bayou	*75
Reinhardt Bayou (P130-05-00):	
At the confluence with Garners Bayou (P130-00-00)	*67
At approximately 100 feet downstream of Southern Pacific Railroad	*67
Taylor Gully (G103-80-03.1):	
Approximately 400 feet upstream of confluence with White Oak Creek (G103-80-03.2)	*57
At Hamblen Road	*65
Turkey Creek (K111-0-00):	
At F.M. 1960	*76
At Aldine-Westfield Road	*82
Langham Creek (U100-00-00):	
Approximately 4,400 feet downstream of the confluence with Horsepen Creek (U106-00-00)	*106
Approximately 1,000 feet downstream of Addicks-Satsuma Road	*108
Horsepen Creek:	
At the confluence with Langham Creek (U100-00-00)	*107
At the upstream corporate limit—300 feet upstream of Addicks Reservoir Boundary	*107
Tributary 9.39 to Armand Bayou (B-111-00-00):	
Approximately 600 feet upstream of corporate limits	*19
Approximately 1.3 miles upstream of corporate limits	*29
Tributary 4.51 to Horsepen Bayou:	
At confluence with Horsepen Bayou	*18
Approximately 1.6 miles upstream of confluence with Horsepen Bayou	*22
Keegans Bayou (D118-00-00):	
At the confluence with Brays Bayou (D100-00-00)	*67
Approximately 1,800 feet upstream of South Braeswood Boulevard	*67
Fondren Diversion Channel (D140-00-00):	
At the confluence with Brays Bayou (D100-00-00)	*63
Approximately 400 feet downstream of McLain Boulevard	*63
Tributary 17.42 to Brays Bayou CD133-00-00):	
At the confluence with Brays Bayou	*63
Approximately 400 feet upstream of Birdwood	*63
Chimney Rock Diversion Channel (D139-00-00):	
At the confluence with Brays Bayou	*57
Approximately 200 feet upstream of Willow Bend Boulevard	*57
Willow Waterhole Bayou (D112-00-00):	
At the confluence with Brays Bayou	*54
At the Willowbend Bayou Boulevard (westbound)	*54
Maps available for inspection at the Department of Public Works, 3500 City Hall Annex, Houston, Texas.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Humble (city), Harris County (FEMA docket No. 6977)	
Reinhardt Bayou (P130-05-00):	
At the confluence with Garners Bayou (P130-00-00)	*67
At the downstream of U.S. Route 59	*70
Garners Bayou (P130-00-00):	
At confluence of Reinhardt Bayou (P130-05-00)	*67
Approximately 200 feet downstream of East Feeder of U.S. Route 59	*75
Tributary 0.55 to Tributary 3.19 to Garners Bayou (P130-03-01):	
At Atascocita Road	*67
Approximately 1 mile upstream of Atascocita Road	*81
Maps available for inspection at 114 West Higgins, Humble, Texas.	
Hunters Creek Village (city), Harris County (FEMA docket No. 6977)	
Buffalo Bayou (W100-00-00):	
At downstream corporate limits	*53
Approximately 1,000 feet downstream of San Felipe Road	*60
Briar Branch (W140-01-00):	
At the downstream corporate limits	*52
At the downstream side of Bingle Road	*54
Tributary No. 1 to Buffalo Bayou:	
At the confluence with Buffalo Bayou (W100-00-00)	*56
Approximately 700 feet upstream of South Voss Road	*56
Maps available for inspection at the City Hall, 8333 Katy Freeway, Suite 112, Houston, Texas.	
Mansfield (city), Tarrant and Johnson Counties (FEMA docket No. 6973)	
Hogpen Branch:	
Approximately 50 feet downstream of Walnut Creek Drive	*586
Approximately 1,950 feet upstream of Walnut Creek Drive	*594
Maps available for inspection at the City Hall, 1305 E. Broad Street, Mansfield, Texas.	
Pasadena (city), Harris County (FEMA docket No. 6977)	
Horsepen Bayou (B104-00-00): Approximately 1.4 miles above the confluence with Armand Bayou (B100-00-00)	*13
Maps available for inspection at the City Hall, 1211 E. Southmore, Pasadena, Texas.	
Piney Point Village (city), Harris County (FEMA docket No. 6977)	
Buffalou Bayou (W-100-00-00): Approximately 0.5 mile downstream of San Felipe Road	*59
Maps available for inspection at the City Hall, 7745 San Felipe, Suite 101, Houston, Texas.	
Spring Valley (city), Harris County (FEMA docket No. 6977)	
Spring Branch:	
Approximately 200 feet downstream of Missouri-Kansas-Texas Railroad	*55
Approximately .4 mile upstream of Voss Road	*76
Briar Branch:	
At upstream side of Bingle Road	*54
Approximately 300 feet upstream of Missouri-Kansas-Texas Railroad	*57
Maps available for inspection at 1025 Campbell Road, Houston, Texas.	
Webster (city), Harris County (FEMA docket No. 6977)	
Tributary 10.08 to Clear Creek:	
At the confluence with Clear Creek (A100-00-00)	*11
Approximately 1.1 miles upstream of F.M. 528	*23
Cow Bayou:	
Approximately 500 feet upstream of F.M. 528	*12
Approximately 1,200 feet upstream of F.M. 528	*12
Clear Creek:	
At the upstream side of Union Pacific Railroad	*11
At Interstate Route 45 and U.S. Route 75	*11
Maps available for inspection at 311 Pennsylvania Avenue, Webster, Texas.	
WEST VIRGINIA	
Weirton (city), Brook and Hancock Counties (FEMA docket No. 6979)	
Harmon Creek:	
Approximately 260 feet upstream of confluence with Ohio River	*672
At the upstream County boundary	*824
King Creek:	
Approximately .75 mile upstream of confluence with Ohio River	*676
At upstream corporate limits	*829
Maps available for inspection at the Office of Community Development, 200 Municipal Plaza, Weirton, West Virginia.	

Issued: April 19, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-10056 Filed 4-30-90; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 80993-0094]

RIN 0648-AC75

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this rule to approve and implement a previously disapproved portion of Amendment 4 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). This rule provides that white shrimp taken in the exclusive economic zone (EEZ) will be subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State. The intended effects of this rule are to provide consistency between State and Federal management measures, to facilitate enforcement, and to enhance yield in volume and value from the shrimp fishery by deferring harvest of small shrimp, thus allowing growth and promoting efficient utilization of the resource.

EFFECTIVE DATE: May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813-893-3722.

SUPPLEMENTARY INFORMATION: The shrimp fishery in the Gulf of Mexico is managed under the FMP, prepared by the Gulf of Mexico Fishery Management Council (Council), and its implementing regulations at 50 CFR part 658, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* This rule implements a resubmitted portion of Amendment 4 to the FMP.

Background

Amendment 4 was originally submitted to the Secretary of Commerce (Secretary) in December 1987. It was preliminarily disapproved in January 1988 because of inadequacies in certain information and analysis. The Council resubmitted Amendment 4 in August 1988, and its availability was published in the **Federal Register** on August 24, 1988 (53 FR 32264). The proposed rule to implement Amendment 4 was published in the **Federal Register** on September 21, 1988 (53 FR 36609).

The Secretary approved portions of Amendment 4 on October 19, 1988, but did not approve the proposal that white shrimp taken in the EEZ conform to the minimum-size landing and possession limits of the state where landed (53 FR 49992, December 13, 1988). NOAA disapproved the proposal because (1) it was not justified by adequate economic rationale; (2) the use of size counts as a management tool for shrimp was inconsistent with the FMP; and (3) the measure included an open-ended deferral to changes in State count laws for white shrimp that would not be reviewable for conformance with the FMP prior to becoming applicable to white shrimp harvested from the EEZ.

The Council revised its proposal so that white shrimp taken in the EEZ would be subject to a State's minimum-size landing and possession limits only with respect to Louisiana's limits when possessed within the jurisdiction of Louisiana. Further, the Council provided additional rationale and analysis for its proposal. The justification for the proposal and a discussion of the analysis were contained in the preamble to the proposed rule (55 FR 7747, March 5, 1990) and are not repeated here.

One comment was received on the proposed rule. A Louisiana shrimp dealer/processor, for himself and, purportedly, for forty offshore shrimp trawlers, favored the proposed rule.

NOAA initiated consultation under section 7 of the Endangered Species Act regarding the impact of this rule on endangered and threatened sea turtles. A Biological Opinion resulting from that consultation concluded that this rule would not adversely affect endangered or threatened species.

NOAA approves the resubmitted portion of Amendment 4. Therefore, the proposed rule is adopted as a final rule without change.

Classification

The Secretary determined that the resubmitted Amendment 4 is necessary for the conservation and management of the shrimp fishery in the Gulf of Mexico and that it is consistent with the Magnuson Act and other applicable law.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared a regulatory impact review (RIR) which concludes that this rule will have the following economic effects. The value of white shrimp harvested at a larger size is expected to exceed the value that would be harvested in the absence of this rule. Enforcement by Louisiana of its size limits will be more efficient and effective.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will have an economic impact only on those relatively few fishermen who catch white shrimp smaller than 100-count in the EEZ (or illegally in Louisiana's waters) and land them in Louisiana. The economic impact would not be significant because harvest of these small shrimp is deferred until they reach a larger size, rather than foregone. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) for this amendment and, based on the EA, the Assistant Administrator for Fisheries, NOAA, concluded that there will be no significant adverse impact on the environment as a result of this rule.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Louisiana. This determination was submitted for review by Louisiana under section 307 of the Coastal Zone Management Act and Louisiana agreed with the determination. There is no effect on any other state.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 25, 1990.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 658.26 is revised to read as follows:

§ 658.26 Size restrictions.

There are no minimum size restrictions for shrimp harvested in the EEZ except that white shrimp harvested in the EEZ are subject to the minimum-size landing and possession limits of Louisiana when possessed within the jurisdiction of that State.

[FR Doc. 90-10012 Filed 4-30-90; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 84
Tuesday, May 1, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ACE-01]

Proposed Alteration of Control Zone—Rolla, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the control zone at the Rolla National Airport, Rolla, Missouri, from a full-time to a part-time control zone. The FAA has been advised that weather observations are not available at the Rolla National Airport from 10 p.m. to 6 a.m. each day. Accordingly, it is necessary to alter the control zone description at the Rolla National Airport, Rolla, Missouri, to reflect its part-time status. The effective dates and times of the control zone will be published in the Airport/Facility Directory.

DATES: Comments must be received on or before June 2, 1990.

ADDRESSES: Send comments on the porposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale Carnine, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart F, § 71.171 of the Federal Aviation Regulations (14 CFR 71.171) to alter the control zone at Rolla, Missouri. The FAA has been advised that weather observations are not available at the Rolla National Airport from 10 p.m. to 6 a.m. each day. Accordingly, it is necessary to alter the control zone description at the Rolla National Airport, Rolla, Missouri, to reflect its part-time status. The control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and will be continuously published in the Airport/Facility Directory.

Section 71.171 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F, January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Vichy, Missouri [Revised]

Within a 5-mile radius of the Rolla National Airport (lat. 38°07'40" N., long. 91°46'10" W.); and within 3 miles each side of the 067° radial of the Vichy VORTAC extending from the 5-mile radius zone to 6½ miles northeast of the Vichy VORTAC. This control zone will be effective during the specific dates and times established in advance by a Notice to Airmen and continuously published in the Airport/Facility Directory.

Issued in Kansas City, Missouri, on April 18, 1990.

William Behan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 90-10018 Filed 4-30-90; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 90-ASW-17]

Proposed Alteration of VOR Federal Airway V-194; Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of VOR Federal Airway V-194 by extending that airway from Hobby, TX, to Scurry, TX. Currently, controllers are required to issue full route clearances to all aircraft proceeding to Dallas, TX, and Fort Worth, TX. This action would designate a preferential route between these terminal areas that would reduce the verbiage required for an air traffic control clearance. This action would reduce controller workload.

DATES: Comments must be received on or before June 12, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW-500, Docket No. 90-ASW-17, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASW-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-194 by extending that airway from Hobby, TX, to Scurry, TX. Currently, pilots proceeding from the Houston, TX, area to the Dallas/Fort Worth, TX, area via Scurry must receive a detailed air traffic control clearance. The FAA would designate this airway between these terminals as the preferential route. Pilots would then receive a brief routing identifier which would indicate the preferential route to be followed. This action would reduce controller workload. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g); (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-194 [Amended]

By removing the words "From Hobby, TX, via" and substituting the words "From Scurry, TX; College Station, TX; INT College Station 151°T (143°M) and Hobby, TX, 290°T (284°M) radials; Hobby;"

Issued in Washington, DC, on April 20, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-10019 Filed 4-30-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 290

[Docket No. 900109-0009]

RIN 0693-AA82

Regional Centers for the Transfer of Manufacturing Technology

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Proposed rule.

SUMMARY: The proposed rule provides a description of a program for establishing Regional Centers for the Transfer of Manufacturing Technology in accordance with the Omnibus Trade and Competitiveness Act of 1988. The purpose of this document is to solicit written comments on the proposed rule for the selection and establishment of Regional Centers for the Transfer of Manufacturing Technology.

DATES: Comments on the proposed rule must be received no later than May 31, 1990. All formal comments must be in writing.

ADDRESSES: 1. Written comments on the proposed rule should be mailed to: Director, NIST Manufacturing Technology Centers Program, room B-112, Metrology Building National Institute of Standards and Technology, Gaithersburg, MD 20899.

2. Comments received will be available for public inspection and copying at the Department of Commerce, Central Reference and Records Inspection Facility, Herbert Hoover Bldg., room 6628, 14th Street between E and Constitution Avenue, NW., Washington, DC 20230.

3. Comments on proposed information requirements should be submitted to the OMB Desk Officer, room 3228, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Nanzetta (NIST MTC Program Director), (301) 975-3414 (voice) or (301) 963-6556 (fax.)

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Public Law 100-418, the National Institute of Standards and Technology (NIST) is developing a program to establish Regional Centers for the Transfer of Manufacturing Technology. The objective of the Centers is to enhance productivity and technological performance in United States manufacturing by assisting businesses, especially small- and medium-sized businesses, in the adoption of advanced manufacturing technologies, processes, and practices.

To accomplish the technology transfer mission effectively, each Center shall be active in assisting U.S. businesses in the adoption of advanced manufacturing techniques. Each Center shall focus its efforts on improving the manufacturing and process capabilities of firms within its service region. The services of the Center shall be available to firms and technology agents located in its service region, in its state, and elsewhere. Also, each Center is expected during later years to amplify (leverage) its regional efforts so its technology transfer activities will have national impact.

Each Center will be operated by a nonprofit organization which may already exist or may be established specifically to manage the Center. NIST will support the capital and operating budget of each Center on a matching-funds basis with the host organization providing at least half of the financial support.

These procedures are to be included in the Code of Federal Regulations so that all affected parties shall have a widely-distributed public sources of information describing how the Centers Program will operate and outlining the criteria for Center qualification, application, selection, and establishment.

Request for Comments

Persons interested in responding to the proposed rule should submit their comments in writing to NIST at the above address. All comments received in response to this proposed rulemaking will become part of the public record and will be available for inspection and copying at the above address.

Classification

This document is not a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not have an annual impact on the economy of $100 million or more, nor will it result in a major increase in costs or prices for any group, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule will not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because the program is entirely voluntary for the participating Centers that seek funding from NIST.

It is not a major federal action requiring an environmental assessment under the National Environmental Policy Act.

The Regional Centers for the Transfer of Manufacturing Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, NIST has determined that Executive Order 12372 is not applicable to the Regional Centers for the Transfer of Manufacturing Technology Program. This proposed rule does not contain policies with Federalism implications sufficient to warrent preparation of a Federalism assessment under Executive Order 12612.

This proposed rule contains collection of information requirements subject to the Paperwork Reduction Act. Comments on the proposed information requirements should be submitted to the OMB Desk Office at the above address.

List of Subjects in 15 CFR Part 290

Grant programs, Science and technology, Cooperative agreements.

Dated: April 25, 1990.

John W. Lyons,

Director.

For reasons set forth in the preamble, it is proposed that title 15 of the Code of Federal Regulations be amended by adding part 290 to read as follows:

PART 290—REGIONAL CENTERS FOR THE TRANSFER OF MANUFACTURING TECHNOLOGY

Sec.

Authority: 15 U.S.C. 278k.

§ 290.1 Purpose

This rule provides policy for a program to establish Regional Centers for the Transfer of Manufacturing Technology as well as the prescribed policies and procedures to insure the fair, equitable and uniform treatment of proposals for assistance. In addition, the rule provides general guildeines for the management of the program by the National Institute of Standards and

Technology, as well as criteria for the evaluation of the Centers, throughout the lifecycle of financial assistance to the Centers by the National Institute of Standards and Technology.

The purpose of the Centers is to strengthen the productivity and improve the technological performance of United States based manufacturing firms, especially small- and medium-sized companies, by assisting them in the adoption and productive employment of advanced manufacturing technologies, processes, and practices. The success of the Centers will be judged by the quality of assistance provided to the target firms and their numbers, the degree of impact on infrastructure which provides technological support to the target firms, the focus on cost-effective approaches and leverage, the extent to which the Center can develop continuing resources—both technological and financial, the aggregate productivity improvement effected through activities of the Centers, and the extent to which firms have successfully implemented advanced manufacturing technology.

§ 290.2 Definitions.

(a) The phrase *Aavanced manufacturing technology* refers to the manufacturing technology areas which have been the subject of research in NIST's Automated Manufacturing Research Facility (AMRF). AMRF technology areas include sensors, factory databases, networks and communications systems, process planning, real-time control systems, inspection, scheduling, CAD/CAM, quality, data exchange, intelligent machines including robots, and factory information architecture.

(b) The term *Center* or *Regional Center* means a NIST-established Regional Center for the Transfer of Manufacturing Technology described under these procedures.

(c) The term *operating award* means a cooperative agreement which provides funding and technical assistance to a Center for purposes set forth in § 290.3 of these procedures.

(d) The term *Director* means the Director of the National Institute of Standards and Technology.

(e) The term *NIST* means the National Institute of Standards and Technology, U.S. Department of Commerce.

(f) The term *Program* or *Centers Program* means the NIST program for establishment of and cooperative interaction with Regional Centers for the Transfer of Manufacturing Technology.

(g) The term *qualified proposal* means a proposal submitted by a nonprofit organization which meets the basic requirements set forth in § 290.5 of these procedures.

(h) The term *Secretary* means the Secretary of Commerce.

§ 290.3 Program description.

The Secretary, acting through the Director, shall provide technical and financial assistance for the creation and support of Regional Centers for the Transfer of Manufacturing Technology. Each Center shall be affiliated with a U.S.-based nonprofit institution or organization which has submitted a qualified proposal for a Center Operating Award under these procedures. Support may be provided for a period not to exceed six years. Each Center should bring to bear the technology expertise described in (d) below to assist small- and medium-sized manufacturing firms in adopting more advanced manufacturing technology.

(a) *Advanced Manufacturing Technologies.* The purpose of the program is to transfer advanced manufacturing technology which is the subject of research in NIST's Automated Manufacturing Research Facility (AMRF) to small and medium size U.S. based manufacturers. AMRF technology areas include sensors, factory databases, networks and communications systems, process planning, real-time control systems, inspection, scheduling, CAD/CAM, quality, data exchange, intelligent machines including robots, and factory information architecture. The core of AMRF research has principally been applied in discrete part manufacturing including electronics, composites, plastics, and metal parts fabrication and assembly. Many small- and medium-sizesd firms which would benefit from the introduction of advanced manufacturing technology must first be brought up to the level of best practices with their present technological approach. This is a suitable task for a Center to address. Where off-the-shelf solutions offer less risk and less cost than a development project, they should be employed. Where private-sector consultants who can meet the needs of a small- or medium-sized manufacturer are available, they should handle the task. The Center may provide services that accelerate the introduction of advanced manufacturing technologies within individual companies; this might involve as little as problem analysis, solution identification, integration of components obtained from the private sector, or training opportunities.

(b) *Program objective.* The objective of the NIST Manufacturing Technology Centers is to enhance productivity and technological performance in United States manufacturing. This will be accomplished through:

(1) The transfer of advanced manufacturing technology and techniques, with an emphasis on those developed at NIST, to the Centers and, through them, to small- and medium-sized manufacturing companies throughout the United States;

(2) The participation of indivduals from industry, universities, State governments, other Federal agencies, and, when appropriate, NIST in cooperative technology transfer activities;

(3) Efforts to make new manufacturing technology and processes usable by United States-based small- and medium-sized companies;

(4) The active dissemination of scientific, engineering, technical, and management information about manufacturing to industrial firms, including small- and medium-sized manufacturing companies; and

(5) The utilization, when appropriate, of the expertise and capability that exists in Federal laboratories other than NIST.

(c) *Center Activities.* The activities of the Centers shall include:

(1) The establishment of automated manufacturing systems and other advanced production technologies for the purpose of demonstrations and technology transfer;

(2) The active transfer and dissemination of research findings and center expertise to a wide range of companies and enterprises, particularly small- and medium-sized manufacturers; and

(3) Loans, on a selective, short-term basis, of items of advanced manufacturing equipment to small manufacturing firms with less than 100 employees.

(4) The continuous interaction with NIST and other Regional Centers in an effort to provide a greater coordination of effort, avoid duplication, and to maintain a forum for the cooperative interaction and leveraging of staff expertise.

(d) *Center Organization and Operation.* Each Center will be organized to apply advanced manufacturing solutions to the needs of the manufacturers located in its service region. Each Center will serve to bridge the technology gap between the sources of manufacturing technology (Research & Development organizations, Universities, Federal Laboratories, Vendors, & Professional Organizations) and the practical applications of manufacturing technology. Each Center will maintain manufacturing technology

expertise geared toward small- and medium-sized manufacturers. Regional Centers will be established and operated via cooperative agreements between NIST and the award-receiving organizations. Individual awards shall be decided on the basis of merit review and availability of funding.

(e) *Leverage.* In order to have national impact, the Centers program must concentrate on approaches which can be applied to other companies, in other regions, or by other organizations. A Center should avoid *ad hoc* solutions to individual company's problems, but rather should carry out projects which offer a prospect for generalization to concerns of other companies. It should seek broad implementation with well-developed mechanisms for distribution of results. Leverage is the principle of developing less resource-intensive methods of delivering technologies (as when a Center staff person has the same impact on ten firms as was formerly obtained with the resources used for one, or when a project once done by the Center can be carried out for dozens of companies by the private sector or a state or local organization.) Leverage does not imply a larger non-federal funding match (that is, greater expenditure of non-federal dollars for each federal dollar) but rather a greater impact per dollar.

§ 290.4 Terms and schedule of financial assistance.

NIST may provide financial support to any Center for a period not to exceed six years, subject to the availability of funding. The DOC financial assistance terms and conditions and all applicable OMB Circulars shall be incorporated into the final awards.

NIST may not provide more than 50 percent of the capital and annual operating and maintenance required top create and maintain such Center. Allowable capital costs may be treated as an expense in the year expended or obligated.

(a) *NIST Contribution.* The funds provided by NIST may be used for capital and operating and maintenance expenses. Each Center will oeprate on one-year, annually renewable cooperative agreements, contingent upon successful completion of informal annual reviews. Funding cannot be provided after the sixth year of support. A formal review of each Center will be conducted during its third year of operation by an independent Merit Review Panel in accordance with § 290.8 of these procedures. Centers will be required to demonstrate that they will be self-sufficient by the end of six years of operations. The amount of NIST investment in each Center will depend upon the particular requirements, plans, and performance of the Center, as well as the availability of NIST funds. NIST may support the budget of each Center on a matching-funds basis not to exceed the Schedule of Financial Assistance outlined in Table 1.

TABLE 1.—SCHEDULE OF NIST MATCHING FUNDS

Year of center operation	Maximum NIST share
1-3	50%
4	40%
5	30%
6	20%

(b) *Host Contribution.* The host organization may count as part of its share.

(1) Dollar contributions from state, county, city, industrial or other sources;

(2) Revenue from licensing and royalties;

(3) Fees for services performed.

(4) In-kind contributions of full-time personnel,

(5) In-kind contributions of part-time personnel, equipment, and rental value of centrally located space (office and laboratory) up to a maximum of 50 percent of the host's annual share, and

(6) Allowable capital expenditures may be applied in the award year expended or in subsequent award years.

§ 290.5 Basic proposal qualifications

NIST shall designate each proposal which satisfies the qualifications criteria below as a "qualified proposal" and subject the qualified proposals to a merit review.

(a) *Qualified organizations.* Any nonprofit institution, or group thereof, or consortium of nonprofit institutions, including entities which already exist or may be incorporated specifically to manage the Center.

(b) *Proposal format.* Proposals for Center Operating Awards shall:

(1) Be submitted with a Standard Form 424 to the above address;

(2) *Not exceed 25 typewritten pages in length for the basic proposal document* (which must include the information requirements of paragraph (c) of this section; it may be accompanied by additional appendices of relevant supplementary attachments and tabular material. Basic proposal documents which exceed 25 pages in length will not be qualified for further review.

(c) *Proposal requirements.* In order to be considered for a Center Operating Award, proposals must contain:

(1) A plan for the allocation of intellectual property rights associated with any invention or copyright which may result from the involvement in the Center's technology transfer or research activities consistent with the conditions of § 290.9 below;

(2) A statement which provides adequate assurances that the host organization will contribute 50 percent or more of the proposed Center's capital and annual operating and maintenance costs for the first three years and an increasing share for each of the following three additional years. Applicants should provide evidence that the proposed Center will be self-supporting after six years.

(3) A statement describing linkages to industry, government, and educational organizations within its service region.

(4) A statement defining the service region including a statement of the constituency to be served and the level of service to be provided.

(5) A statement agreeing to focus the mission of the Center on technology transfer activities and not to exclude companies based on state boundaries.

(6) A plan to focus the Center's technology emphasis on areas consistent with NIST technology research programs and organizational expertise.

(7) A description of the planned Center sufficient to permit NIST to evaluate the proposal in accordance with § 290.6 of these procedures.

§ 290.6 Proposal evaluation and selection criteria.

In making a decision whether to provide financial support, NIST shall consider the following criteria.

(a) *Regional need.* Does the proposal define an appropriate service region with a large enough target population of small-and medium-sized manufacturers which the applicant understands and can serve?

(1) *Market Analysis.* Demonstrated understanding of the service region's manufacturing base, including business size, industry types, product mix, and technology requirements.

(2) *Geographical Location.* Physical size, concentration of industry, and economic significance of the service region's manufacturing base. A proposal for a Center located near an existing Center may be considered if the population of manufacturers and the technology to be addressed justify it.

(b) *Technology resources.* Does the proposal assure strength in technical personnel and programmatic resources, full-time staff, facilities, equipment, and linkages to external sources of

technology to develop and transfer technologies related to NIST research results and expertise in the technical area noted in these procedures?

(c) *Technology delivery mechanisms.* Does the proposal clearly and sharply define an effective methodology for delivering advanced manufacturing technology to small-and medium-sized manufacturers?

(1) *Linkages.* Development of effective partnerships or linkages to third parties who will amplify the Center's technology delivery to reach a large number of clients in its service region.

(2) *Program leverage.* Provision of an effective strategy to amplify the Center's technology delivery approaches to achieve national impact as described in § 290.3(e).

(d) *Management and Financial Plan.* Does the proposal define a management structure and assure management personnel to carry out development and operation of an effective Center?

(1) *Organizational structure.* Completeness and appropriateness of the organizational structure, and its focus on the mission of the Center. Assurance of full-time top management of the Center.

(2) *Program management.* Effectiveness of the planned methodology of program management.

(3) *Internal evaluation.* Effectiveness of the planned continuous internal evaluation of program activities.

(4) *Plans for financial matching.* Demonstrated stability and duration of the applicant's funding commitments as well as the percentage of operating and capital costs guaranteed by the applicant. Identification of matching fund sources and the general terms of the funding commitments. Evidence of the applicant's ability to become self-sustaining in six years.

(5) *Budget.* Suitability and focus of the applicant's detailed one-year budget and six-year budget outline.

§ 290.7 Proposal selection process.

Upon the availability of funding to establish Regional Centers, the Director shall publish a notice in the **Federal Register** requesting submission of proposals from interested organizations. Applicants will be given an established time frame, not less than 60 days from the publication date of the notice, to prepare and submit a proposal. The proposal evaluation and selection process will consist of four principal phases: Proposal qualification; Proposal review and selection of finalists; Finalist site visits; and Award determination. Further descriptions of these phases are provided in the following:

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with § 290.5 of these procedures. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* The Director of NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the criteria set forth in § 290.6 of these procedures, assigning equal weight to each of the four categories. From the qualified proposals, a group of finalists will be selected based on this review.

(c) *Finalist site visits.* NIST representatives will visit each finalist organization. Finalists will be reviewed and evaluated anew using the criteria set forth in § 290.6 of these procedures assigning equal weight to each of the four categories. NIST may enter into negotiations with the finalists concerning any aspect of their proposal.

(d) *Award determination.* Based on the site visit evaluation reports, the Director of NIST or his designee shall select awardees for Center Operating Awards. Upon the final award decision, a notification will be made to each of the proposing organizations.

§ 290.8 Review of centers.

(a) Each host receiving a Center Operating Award under these procedures shall be evaluated during its third year of operation by a Merit Review Panel appointed by the Secretary of Commerce. Each such Merit Review Panel shall be composed of private experts, none of whom shall be connected with the involved Center, and Federal officials. An official of NIST shall chair the panel. Each Merit Review Panel shall measure the involved Center's performance against the program objectives specified in § 290.3(b) of these procedures, criteria used to judge the success of the Centers as specified in § 290.1 of these procedures, performance as proposed, industrial base satisfaction, and fund-matching performance. The Secretary shall not provide funding for the fourth through the sixth year of such Center's operation unless the evaluation is positive. As a condition of receiving continuing funding, the Center must show evidence at the third year review that they are making reasonable progress toward self-sufficiency. If the evaluation is positive and funds are available, the Secretary of Commerce may provide continued funding through the sixth year at declining levels, which are designed to insure that the Center no longer needs financial support from NIST by the seventh year. In no event shall funding for a Center be provided by the NIST Manufacturing Technology Centers Program after the sixth year of support.

(b) In addition to the formal third-year review, there will be regular management interaction with NIST and the other Centers for the purpose of evaluation and program shaping. Centers are encouraged to try new approaches, evaluate their effectiveness, and abandon or adjust those which do not have the desired impact. Centers will be reviewed annually as part of the funding renewal process using the criteria of quality of assistance provided to the target firms and their numbers, the degree of impact on infrastructure which provides technological support to the target firms, the extent to which the Center can develop continuing resources—both technological and financial, the aggregate productivity improvement effected through activities of the Centers and the extent to which firms have successfully implemented advanced manufacturing technology. The funding level at which a Center is renewed is contingent upon a positive program evaluation and will depend upon the availability of federal funds and on the Center's ability to obtain suitable match, as well as on the budgetary requirements of its proposed program. Centers must continue to demonstrate that they will be self-supporting after six years.

§ 290.9 Intellectual property rights

(a) In establishing its intellectual property rights policies, the Program seeks to create a balance between the societal good that will result from the prompt and wide-spread application of technologies developed with Program funds, and the need to provide economic incentives for individual firms to utilzie those technologies. In general, the Program will encourage the publication of program results while preserving the right of the recipient to obtain patents, copyrights, and other appropriate forms of intellectual property protection.

(b) Awards under the Program will follow the policies and procedures on ownership to inventions made under grants and cooperative agreements that are set out in Public Law 96–517 (35 U.S.C. chapter 18), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies Dated February 18, 1983, and part 401 of title 37 of the Code of Federal Regulations, as appropriate. These policies and procedures generally require the

Government to grant to Centers selected for funding the right to elect to obtain title to any invention made in the course of the conduct of research under an award, subject to the reservation of a Government license.

(c) Except as otherwise specifically provided for in an Award, Centers selected for funding under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

[FR Doc. 90-10042 Filed 4-30-90; 8:45 am]
BILLING CODE 3510-13-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

RIN 1076-AC21

Preparation of Rolls of Indians

March 26, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to amend the regulations contained in 25 CFR part 61 governing the preparation of rolls of Indians. The Coquille Restoration Act of 1989 directs the Secretary of the Interior to prepare within one year of enactment a tribal membership roll of the Coquille Indian Tribe. The regulations in part 61 provide general enrollment procedures that can be made applicable to the preparation of a specific roll of Indians by amending the regulations to include the qualifications for enrollment and the deadline for filing applications for the particular roll. The BIA is proposing to amend part 61 by adding a paragraph (j) to § 61.4 to include the qualifications for enrollment and the deadline for filing applications so that the procedures contained in part 61 will govern the preparation of the tribal membership roll of the Coquille Indian Tribe.

DATES: Comments must be received on or before May 31, 1990.

ADDRESSES: Written comments should be directed to the Division of Tribal Government Services, Bureau of Indian Affairs, Mail Stop 4627 MIB, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Slover, Division of Tribal Government Services, Bureau of Indian Affairs, Mail Stop 4627 MIB, 18th and C Streets, NW., Washington, DC 20240, telephone number: (202) 343-1702 (FTS: 343-1702).

SUPPLEMENTARY INFORMATION: This proposed amendment to a rule is published in exercise of the authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM8.

This rulemaking action to provide procedures to govern the preparation of a membership roll of the Coquille Indian Tribe was scheduled as a proposed addition of a new part 67 to title 25 of the Code of Federal Regulations on the October 1989 Semiannual Agenda published in the Federal Register on Monday, October 30, 1989, 54 FR 44776. It has since been determined that the procedures contained in 25 CFR part 61 can be used to prepare the tribal membership roll. Consequently, rather than adding a new part 67, the regulations contained in part 61 are being amended.

Section 7 of the Coquille Restoration Act (Restoration Act) of June 28, 1989, Pub. L. 101-42, 103 Stat. 91, directs the Secretary to compile a tribal membership roll of the Coquille Indian Tribe within one year of enactment. The tribal membership roll is to be comprised of Coquille Indian descendants who meet certain requirements. To be eligible for enrollment, Coquille Indian descendants must be living on the date of the Restoration Act, must not be members of another federally recognized tribe, and must possess at least one-eighth (⅛) degree Indian blood. In addition the person must be listed on or have met the requirements to be listed on the Coquille roll prepared under the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the BIA on August 29, 1960, or be the lineal descendant of such a person.

Section 7 further provides that the Coquille roll approved by the BIA on August 29, 1960, shall be accepted as conclusive evidence of Coquille Indian ancestry of all those listed on the roll. Further, Indian blood degree information shown on the January 1, 1940, census roll of nonreservation Indians of the Grande Ronde-Siletz Agency shall be conclusive evidence in determining the degree of Indian blood for applicants. Section 7 also provides that the Secretary shall accept any available evidence establishing Coquille Indian ancestry and Indian blood degree.

The burden of proof is on applicants to establish that they meet the requirements for enrollment. Consequently, although a document such as an affidavit supporting an applicant's eligibility must be accepted as evidence, in and of itself, it may not be sufficient to meet the burden of proof. Applicants not on the specified rolls will need to submit evidence acceptable to the Secretary to establish Coquille Indian ancestry and the required degree of Indian blood. Moreover, even descendants of persons named on the specified rolls will need to submit documentary evidence establishing their relationship to persons named on the specified rolls.

BIA records are the most acceptable form of evidence for establishing Indian ancestry. However, BIA records can contain conflicting information which would need to be evaluated and weighed. For establishing relationship to ancestors, birth certificates, death certificates, copies of probate findings and BIA records are the most acceptable form of evidence. Baptismal records can sometimes be used. Under the provisions of the Coquille Restoration Act other evidence such as affidavits, newspaper articles, and published books will be accepted. However, all evidence submitted and records available to BIA officials will be used in evaluating an applicant's eligibility and the determination of eligibility will be made on the basis of the preponderance of evidence.

As an example, an affidavit from a tribal elder stating personal knowledge that the applicant was of Coquille Indian ancestry would not establish Coquille Indian ancestry for the purposes of eligibility under the Coquille Restoration Act if Bureau records clearly showed that the applicant was of Coos Indian ancestry. On the other hand, being named on or having a lineal ancestor named on the Coquille roll

approved by BIA on August 29, 1960, would establish Coquille Indian ancestry for the purposes of eligibility under the Coquille Restoration Act regardless of what other documents or records, even the January 1, 1940, census roll of nonreservation Indians of the Grande Ronde-Siletz Agency, showed for the Indian ancestry of the applicant.

To establish eligibility for enrollment the proposed amendment requires persons to file or have filed on their behalf an application form with the Superintendent, Siletz Agency, Bureau of Indian Affairs, by the deadline specified in proposed § 61.4(j)(2). It is proposed that the deadline be 60 days from the effective date of the Final Rule which will actually be 90 days from date of publication in the **Federal Register** of the Final Rule to govern the preparation of the Coquille tribal membership roll. (The Final Rule will be published with a 30-day deferred effective date.) Applications filed after that date will be rejected for failure to file on time regardless of whether the applicants otherwise meet the qualifications for enrollment.

It should be noted the Restoration Act does provide that after the Coquille tribal membership roll provided for in the Act has been completed, membership in the Coquille Indian Tribe shall be governed by the tribal constitution adopted in accordance with the provisions of section 9 of the Restoration Act. Thereafter, however, in addition to any other membership requirements contained in the tribal constitution, persons must be of Coquille Indian ancestry and not be members of any other federally recognized tribe to establish eligibility for membership in the Coquille Indian Tribe. Consequently, applicants who are rejected for failure to file on time may be considered for membership after the adoption of the tribal constitution.

The regulations in part 61 provide general enrollment procedures and contain provisions which are not applicable in the preparation of all rolls. As a matter of clarification, because the BIA is preparing a tribal membership roll of the Coquille Indian Tribe under this proposed amendment, review of applications by tribal authorities under § 61.10 is authorized to provide for maximum tribal participation in the enrollment process.

In addition to general public notice, the BIA attempts to provide actual notice to as many potentially eligible beneficiaries as possible. Section 61.5(c) of part 61 provides that, when applicable, the Director or Superintendent shall "mail notices of the preparation of the roll to previous enrollees or tribal members at the last address of record or, in the case of tribal members, the last address available." The last roll of Coquille Indians prepared by BIA was a descendancy roll which was approved in 1960. Because the roll is so out-of-date, it would not be practical to provide notice to persons whose names appear on that roll. However, the Coquille Indian Tribe does maintain a list of individuals who have been affiliated with the Tribe through the restoration process which is more current. Consequently, the Superintendent, Siletz Agency, Bureau of Indian Affairs, shall send notices to those persons whose names and addresses are furnished to him by the Coquille Indian Tribe. The notice shall advise individuals of the preparation of the roll and the relevant procedures to be followed, including the qualifications for enrollment and the deadline for filing application forms. An application form will be mailed with each notice.

The primary author of this document is Kathleen L. Slover, Tribal Enrollment Specialist, Division of Tribal Government Services.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this proposed amendment.

The Office of Management and Budget had informed the Department of the Interior that the information collection requirements contained in this part 61 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and this rule provides only for the enrollment of those individuals as members of the Coquille Indian Tribe which will not have a significant gross annual effect on the economy.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

The Department of the Interior has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and that neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 25 CFR Part 61

Indians—enrollment.

Accordingly, it is proposed that part 61 of subchapter F of chapter I of title 25 of the Code of Federal Regulations be amended as shown.

1. The authority citation for part 61 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 25 U.S.C. 1401 *et seq.*, as amended; Pub. L. 100–139; Pub. L. 100–580; Pub. L. 101–42.

2. Section 61.4 is amended by adding a new paragraph (j) to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(j) *Coquille Tribe of Indians.* (1) Pursuant to section 7 of the Coquille Restoration Act of June 28, 1989, Pub. L. 100–139, a tribal membership roll is to be prepared comprised of persons of Coquille Indian ancestry:

(i) Who were born on or before and living on June 28, 1989;

(ii) Who possess at least one-eighth (⅛) degree or more Indian blood;

(iii) Who are not enrolled members of another federally recognized tribe; and

(iv) Whose names were listed on the Coquille roll prepared pursuant to the Act of August 30, 1954 (68 Stat. 979; 25 U.S.C. 771), and approved by the Bureau of Indian Affairs on August 29, 1960;

(v) Whose names were not listed on but who met the requirements to be listed on the Coquille roll prepared pursuant to the Act of August 30, 1954, and approved by the Bureau of Indian Affairs on August 29, 1960; or

(vi) Who are lineal descendants of persons, living or dead, identified in paragraphs (j)(1)(iv) and (j)(1)(v) of this section.

(2) Application forms for enrollment must be filed with the Superintendent, Siletz Agency, Bureau of Indian Affairs, P.O. Box 539, Siletz, Oregon 97380 by (60 days from the effective date of the Final rule). Application forms filed after that date will be rejected for inclusion on the roll being prepared for failure to file on time regardless of whether the applicant otherwise meets the qualifications for enrollment.

(3) For the purposes of establishing eligibility under paragraph (j) of this section, any available evidence establishing Coquille ancestry and the required degree of Indian blood shall be accepted. However, information shown on the Coquille roll prepared pursuant to the Act of August 30, 1954, shall be accepted as conclusive evidence of Coquille ancestry and blood degree information shown on the January 1, 1940, census roll of nonreservation

Indians of the Grand Ronde-Siletz Agency shall be accepted as conclusive evidence in determining degree of Indian blood for applicants.

* * * * *

Walt R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90-9992 Filed 4-30-90; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF JUSTICE

United States Marshals Service

[Atty. Gen. Order No. 1412-90]

28 CFR Part 0

United States Marshals Service Fees

AGENCY: United States Marshals Service; Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the United States Marshals Service fees and commissions pursuant to 28 U.S.C. 1921(b) as amended by section 7608(c) of the Anti-Drug Abuse Act of 1988, Public Law 100-690.

New § 1921(b) of title 28, United States Code, requires the Attorney general to establish fees to be taxed and collected for certain services rendered by the United States Marshals Service in connection with federal court proceedings. To the extent practicable, these fees shall reflect the actual and reasonable costs of the services provided. In addition, § 1921(c)(2) requires the Attorney General to establish a minimun and maximum amount for the U.S. Marshals Service commissions for sales conducted pursuant to federal court proceedings.

Prior to the passage of the Act, the U.S. Marshals Service fees for serving and executing federal court process were seriously outdated, as compared to the rates charged in the private sector for similar services. The U.S. Marshals Service costs for serving process far exceeded the fees charged private litigants, thus requiring the Service to use public funds to subsidize private litigation The proposed rule aims to establish fees for serving and executing federal court process based on the actual costs, *e.g.*, salaries, overhead, travel, out-of-pocket expenses, of the services rendered and the hours expended.

The proposed rule also establishes a range for the U.S. Marshals Service commissions to eliminate unduly high and low commissions resulting from a strict application of the statutory formula in section 1921. In the past, the Service's commission was based solely on the value of the property sold and did not provide for a minimum to assure recovery of costs or a maximum to protect against unduly high commissions. Thus resulted in litigation and judicial review of statutorily prescribed commissions charged private litigants.

The proposed rule limits the U.S. Marshals Service commission imposed under section 1921 to a minimum and maximum amount. The minimum guarantees the Government a fixed level of cost coverage, while the maximum protects the private litigant from excessive Marshals Service commissions. Moreover, by establishing a reasonable maximum, the proposed rule should also eliminate the need for judicial review of these matters.

DATES: Comments must be received by May 31, 1990.

ADDRESSES: Director, c/o Finance Division, United States Marshals Service, 600 Army Navy Drive, Arlington, Virginia 22202-4210.

FOR FURTHER INFORMATION CONTACT: Edward Moyer, Chief, Finance Division, United States Marshals Service, at (202) 307-9230 or FTS 367-9230. This is not a toll-fee number.

SUPPLEMENTARY INFORMATION: This rule is not a major rule for purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities (5 U.S.C. 601).

List of Subjects in 28 CFR Part O

U.S. Marshals Service and Fees.

Therefore, by virtue of the authority vested in me by law, including 28 U.S.C. 509, 510, 5 U.S.C. 301, and 28 U.S.C. 1921(b), 1921(c), it is proposed to amend part O of title 28 of the Code of Federal Regulations by adding a new § 0.114 to read as follows:

PART O—[AMENDED]

1. The authority citation for part O is revised to read as follows:

Authority: 5 U.S.C. 301, 2303, 3101; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3521, 3621, 3622, 4001, 4041, 4042, 4044, 4082, 4201, *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621-1645o, 1622 note; 28 U.S.C. 509, 510, 515, 516, 519, 524, 543, 552, 552a, 569, 1921(b), 1921(c); 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 1989b, 2001-2017p; Pub. L. No. 91-513, sec. 501; EO 11919; EO 11267; EO 11300.

2. A new § 0.114 is added to title 28, Code of Federal Regulations to read as follows:

§ 0.114 Fees for services.

(a) The United States Marshals Service shall routinely collect fees according to the following schedule:

(1) For process forwarded for service from one U.S. Marshals Service office or suboffice to another—$3.00 per item forwarded;

(2) For process served by mail—$3.00 per item mailed;

(3) For process served or executed personally—$40.00 per item if served by one U.S. Marshals Service employee, agent, or contractor in two regular office hours (duty hours) or less, or $50.00 per item if served by one U.S. Marshals Service employee, agent, or contractor in two non-duty hours or less, plus travel costs and any other out-of-pocket expenses. For each additional hour, or portion thereof, and/or each additional U.S. Marshals Service employee, agent, or contractor—$20.00 per duty hour ($25.00 per non-duty hour) for each item served, plus travel costs and any other out-of-pocket expenses. Travel costs, including mileage, shall be calculated according to 5 U.S.C. chapter 57.

(b) The United States Marshals Service shall collect the fees enumerated in pargraph (a) of this section where applicable, even when process is returned to the court or the party unexecuted, as long as service is endeavored.

(c) Pursuant to 28 U.S.C. 565, the Director of the United States Marshals Service is authorized to use funds appropriated for the Service to make payments for expenses incurred pursuant to personal services contracts and cooperative agreements for the service of summonses on complaints, subpoenas, and notices, and for security guards.

(d) The United States Marshals Service shall collect a commission of 3 percent of the first $1,000 collected and 1.5 percent on the excess of any sum over $1,000, for seizing or levying on property (including seizures in admiralty), disposing of such property by sale, setoff, or otherwise, and receiving and paying over money, except that the amount of commission shall not be less than $100.00 and shall not exceed $50,000.

Dated: April 23, 1990.

Dick Thornburgh,

Attorney General.

[FR Doc. 90-9996 Filed 4-30-90; 8:45 am]

BILLING CODE 4410-01-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 306

[CRT Docket No. 90-4-90JL]

Determination of Negotiated Jukebox Licenses

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Tribunal is proposing to amend certain of its rules to conform them to the action taken by the Tribunal when it suspended the jukebox compulsory license through December 31, 1999.

DATES: An original and five copies of all comments shall be filed by June 1, 1990.

ADDRESSES: Comments should be addressed to: Chairman, Copyright Royalty Tribunal, 1111 20th Street, NW., suite 450, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., suite 450, Washington, DC 20036 (202) 653-5175.

SUPPLEMENTARY INFORMATION: The Berne Convention Implementation Act of 1988 provided a procedure by which the jukebox compulsory license could be suspended if the owners and users of music on jukeboxes were to reach their own voluntary license agreement.

On March 28, 1990, the Tribunal published in the Federal Register its finding that an agreement between the three performing rights societies, ASCAP, BMI and SESAC, and the trade association representing jukebox operators, AMOA, had been reached and that, consequently, the jukebox compulsory license was suspended for the term of the voluntary agreement—through December 31, 1999. 55 FR 11429.

With the action taken by the Tribunal on March 28, 1990, certain of the Tribunal's rules concerning jukebox rates need to be changed. However, concerning jukebox royalty distribution, the Tribunal still has the 1989 distribution pending and plans to change those rules only after the 1989 distribution has been made.

List of Subjects in 37 CFR Parts 301 and 306

Administrative practice and procedure, Freedom of information, Sunshine Act, Copyright, Jukeboxes, Rates.

For the reasons set forth in the preamble, the Tribunal proposes to amend 37 CFR parts 301 and 306 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a).

2. Section 301.1 is proposed to be revised as follows:

§ 301.1 Purpose.

The Copyright Royalty Tribunal (Tribunal) is an independent agency in the Legislative Branch, created by Public Law 94-553 of October 19, 1976. The Tribunal's statutory responsibilities are:

(a) To make determinations concerning copyright royalty rates in the areas of cable television covered by 17 U.S.C. 111.

(b) To make determinations concerning copyright royalty rates for the making and distributing of phonorecords (17 U.S.C. 115).

(c) To make determinations concerning copyright royalty rates for coin-operated phonorecord players (jukeboxes) whenever a sufficient number of voluntary license agreements between jukebox operators and the copyright owners of musical works played on jukeboxes are not in effect (17 U.S.C. 116, 116A).

(d) To establish and later make determinations concerning royalty rates and terms for the use by noncommercial educational broadcast stations of certain copyrighted works (17 U.S.C. 118).

(e) To distribute cable television, jukebox, and satellite carrier royalties under 17 U.S.C. 111, 116, and 119, respectively, deposited with the Register of Copyrights.

(f) To monitor and assist the negotiation of an adjustment to the satellite carrier royalty rates, and/or to assist and review the arbitration of an adjustment to the satellite carrier royalty rates (17 U.S.C. 119).

PART 306—ADJUSTMENT OF ROYALTY RATES FOR COIN OPERATED PHONORECORD PLAYERS

3. The authority citation for part 306 is proposed to be amended to read as follows:

Authority: 17 U.S.C. 116A, 801(b)(1) and 804(e).

4. In § 306.3, a new paragraph (e) is proposed to be added as follows:

§ 306.3 Compulsory license fees for coin-operated phonorecord players.

* * * * *

(e) Commencing January 1, 1990, the annual compulsory license fee for a coin-operated phonorecord player is suspended through December 31, 1999, or until such time as the license agreement between AMOA and ASCAP/BMI/SESAC is terminated.

Dated: April 24, 1990.

J. C. Argetsinger,

Chairman.

[FR Doc. 90-10010 Filed 4-30-90; 8:45 am]

BILLING CODE 1410-09-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL-3760-8]

Approval and Promulgation of Implementation Plans; Ohio State Implementation Plan; Withdrawal

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: In a January 3, 1989, (54 FR 41) notice of proposed rulemaking, USEPA proposed to approve a site-specific revision to the Ohio State Implementation Plan (SIP) for volatile organic compounds (VOC). This SIP revision would have given Ford Motor Company an alternative emission control plan (bubble) with monthly averaging, for its two air cleaner spray booths and a dip tank in Erie County, Sandusky, Ohio.

Today, USEPA is withdrawing its proposed rulemaking, because the Ohio Environmental Protection Agency withdrew its underlying SIP revision request for Ford Motor Company on March 27, 1990. Thus, USEPA's proposal is moot.

EFFECTIVE DATE: May 1, 1990.

ADDRESSES: Copies of the SIP revision request, public comments on the notice of proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following address: (It is recommended that you telephone Uylaine E. McMahan at (312) 886-6031, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Hydrocarbons, Intergovernmental relationships.

Dated: April 17, 1990.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 90–10099 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–3760–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Acme Fill Corporation (Acme Fill) of Martinez, California, for a one-time exclusion of certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 15, 1990. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Josepth Carra, whose address appears below, by May 16, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–90–AFDP–FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS–340), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M street SW (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA hotline, toll free at (800) 424–9346, or at (202)382–3000. For technical information concerning this notice, contact Linda Cessar, Office of Solid Waste (OS–343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475–9828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making today's proposed delisting determination, the Agency first evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11(a)(2) and (a)(3). EPA also evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to

believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste (*e.g.*, the impact of the disposal of the petitioned waste on ground-water quality). Based on this review, the Agency disagrees with the petitioner's claim that the waste is non-hazardous. As a result, EPA today is proposing to deny the petition.

For this delisting determination, the Agency used the information described above to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Acme Fill's petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were then compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the acquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because Acme Fill is seeking a delisting of waste managed in an on-site unit subject to RCRA ground-water monitoring regulation, ground-water monitoring data collected from the area where the petitioned waste is contained are important in determining whether hazardous constituents have migrated to the ground water. Ground-water monitoring data collected from Acme Fill's monitoring wells help characterize the impact (if any) of the disposal of Acme Fill's waste on ground-water quality.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Acme Fill Corporation, Martinez, California

1. Petition for Exclusion

Acme Fill Corporation (Acme Fill) operates its North Parcel Landfill in Martinez, California. The North Parcel Landfill accepts industrial wastes, household garbage, demolition debris, "California-designated" wastes (*i.e.*, specific hazardous wastes listed under Article 15, section 66900 of the California Administrative Code) and, at one time, selected hazardous wastes. Acme petitioned the Agency to exclude, on a one-time basis, leachate originating from its North Parcel Landfill which contains a mixture of solid wastes and the following hazardous wastes: EPA Hazardous Waste No. U002—Acetone, EPA Hazardous Waste No. U080—Methylene chloride, EPA Hazardous Waste No. U213—Tetrahydrofuran, and EPA Hazardous Waste No. U226—1,1,1—Trichloroethane. The basis for listing for EPA Hazardous Waste Nos. U002 and U213 is ignitability; the basis for listing for EPA Hazardous Waste Nos. U080 and U226 is toxicity (see 40 CFR 261.33).

Acme Fill petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Acme Fill claims that its landfill leachate is not hazardous because the constituents of concern are present in insignificant concentrations. Acme Fill also believes that the waste is not hazardous for any other reascn (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA 42 USC 6921(f), and 40 CFR 260.22(d)(2)-(4). Today's proposal to deny this petition for delisting is the result of the Agency's evalution of Acme Fill's petition.

2. Background

On December 10, 1986, Acme Fill petitioned the Agency to exclude, on a one-time basis, its landfill leachate and subsequently provided additional information. In support of its petition, Acme Fill submitted (1) General descriptions of its landfill, waste disposal practices, and leachate collection process; (2) a list of materials disposed in the North Parcel Landfill; (3) results from total constituent analyses of the waste for the EP toxic metals, antimony, beryllium, cobalt, nickel, thallium, vanadium, sulfide, and cyanide; (4) results from total constituent analyses of the waste for selected hazardous organic constituents; (5) results from characteristics testing for ignitability, corrosivity, and reactivity; and (6) results from the analyses of ground-water samples collected from wells that monitor the North Parcel Landfill.

Acme Fill has operated its North Parcel Landfill since the early 1950s. The North Parcel Landfill was granted a Class II-1 permit in 1976 by the state of California under which it received commercial, residential, and construction wastes, California-designated wastes, and selected hazardous wastes. Hazardous wastes have not been accepted for disposal at Acme Fill since 1984; Acme Fill estimates that less than one percent of the waste disposed of in the North Parcel Landfill is hazardous waste.

Acme Fill states in its petition that, initially, wastes were placed on the original ground surface of the North Parcel Landfill, burned, and covered with additional wastes that were, in turn, burned. By the late 1950s, waste

disposal operations consisted of compacting the refuse and occasionally covering it with soil. Since 1981, Acme Fill has covered the waste daily with a 6-inch layer of soil. Acme Fill also claims that all of the wastes received are co-disposed and are not separated according to waste type.

Leachate, the subject of Acme Fill's petition, has been accumulating within the North Parcel Landfill since the early 1950s. No containment structures existed around the landfill until 1979, when Acme Fill began construction of impermeable trenches and dikes. By 1982, 75 percent of the landfill perimeter was bounded by trenches or dikes. In 1983, two collection sumps were installed in the northeast and northwest corners of the landfill for leachate removal; no other leachate management or treatment system exists at the North Parcel Landfill.

To collect representative samples of a variable waste such as Acme Fill's landfill leachate, petitioners are normally requested to collect a sufficient number of samples of the waste that characterize the variability or uniformity of the waste (*e.g.*, a minimum of four samples collected over an extended period of time). The frequency of sampling and the number of individual grab samples that a petitioner collects depends on the expected variability of the waste over time. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid (EPA/530–SW–85–003), April 1985.

Acme Fill collected a total of ten grab samples from the North Parcel Landfill's northeast and northwest sumps between December 1984 and November 1986. These ten grab samples were collected from the sumps using a bailer after the sumps had been purged for 15 minutes to allow fresh leachate to enter. All ten grab samples were analyzed for pH. Five of the ten grab samples (sample numbers 11606, 11651, 11691, 11754, and 11779) were analyzed for total constituent per mass of waste) of cadmium, lead, mercury, nickel, total cyanide, and 2,4-dinitrophenol. Three of these five samples (sample numbers 11606, 11651, and 11691) were also analyzed for total arsenic. One of the ten grab samples (sample number 255–123) was analyzed for total constituent concentrations of the EP toxic metals, antimony, beryllium, cobalt, nickel, thallium, vanadium, and priority pollutants. One of the ten grab samples (sample number 255–134–1) was analyzed for total constituent concentrations of antimony, arsenic, beryllium, cadmium, chromium, lead, mercury, nickel, silver, thallium, cyanide, and oil and grease content. One of the ten grab samples (sample number 255–134–2) was analyzed for total constituent concentrations of eighteen pesticides and eight polychlorinated biphenyl (PCB) compounds. One of the ten grab samples (sample number 255–163) was analyzed for total cyanide and sulfide content and the characteristics of ignitability, corrosivity, and reactivity. One of the ten grab samples (sample 6861) was analyzed for total sulfide.

In November of 1986, Acme Fill collected and provided data for sixteen samples of landfill leachate. Acme Fill also collected and provided data for three samples of landfill leachate in January of 1987. Descriptions of sampling procedures were not provided for these nineteen samples. Four of the sixteen samples collected in November of 1986 were analyzed for total constituent concentrations of twenty nine purgeable halocarbons; four different samples were analyzed for total constituent concentrations of seven purgeable aromatic compounds; and a third set of four samples were analyzed for total constituent concentrations of acid and base/neutral priority pollutant compounds. The remaining four samples collected in November of 1986 were analyzed for total constituent concentrations of the EP toxic metals, antimony, beryllium, cobalt, nickel, thallium, and vanadium. The three samples collected in January of 1987 were analyzed for total concentrations of the EP toxic metals, antimony, beryllium, cobalt, nickel, thallium, vanadium, twenty-nine purgeable halocarbons, and eight purgeable aromatic compounds.

Acme Fill believes that the samples collected to support its petition are representative of any variation in constituent concentration expected to occur in the leachate because these samples were collected over an extended time period. Furthermore, Acme Fill points out that the North Parcel Landfill no longer accepts hazardous waste.

Although Acme Fill did not provide descriptions of procedures used to collect samples of the petitioned landfill leachate for the November 1986 and January 1987 sampling events, EPA believes that these samples are representative of at least a portion of the petitioned waste and, therefore, provide an indication of the levels of hazardous constituents in the landfill leachate. Because there was sufficient basis to propose denial of the petition, the Agency did not request Acme Fill to conduct more complete sampling and analyses.

3. Agency Analysis

Acme Fill contracted the analyses of the above described samples to three different laboratories. These laboratories relied on methods from SW–846, "Methods for Chemical Analysis of Water and Wastes", and "Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater" to quantify the total constituent concentrations of the EP metals, antimony, beryllium, cobalt, nickel, thallium, vanadium, cyanide, and sulfide. (See the RCRA public docket for today's notice for the specific analytical methods used by these laboratories.)

The petitioned landfill leachate waste was analyzed only for total constituent concentrations because the waste contained less than 0.5 percent dissolved solids. Under this condition, the extraction procedure (EP) leachate concentration (*i.e.*, mass of a particular constituent per unit volume of extract) is considered equivalent to the total concentration. Total constituent analyses of the petitioned landfill leachate for the hazardous inorganic constituents revealed the maximum concentrations reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) NORTH PARCEL LANDFILL LEACHATE

Constituents	Total constituent analyses
Antimony	0.35
Arsenic	<0.003
Barium	9.1
Beryllium	<0.01
Cadmium	0.042
Chromium	0.07
Cobalt	0.28
Lead	0.11
Mercury	<0.0005
Nickel	0.28
Selenium	<0.02
Silver	0.03
Thallium	0.32
Vanadium	0.4
Cyanide (total)	<0.05
Sulfide	<0.05

< Denotes that the constituent was not detected at the detection limit specified in the table.

The detection limits in Table 1 (and Table 2 that follows) represent the lowest concentrations quantifiable by Acme Fill, when using the appropriate analytical methods to analyze the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause

interferences, thus raising the detection limits.)

As discussed previously, Acme Fill contracted the analyses of its landfill leachate samples to three different laboratories. These laboratories relied on methods from SW–846, "Methods for Chemical Analysis of Water and Wastes," and "Methods for Organic Chemical Analysis of Municipal and Industrial Wastewater" to quantify the total constituent concentrations of the hazardous organic constituents in the petitioned waste. (See the RCRA public docket for today's notice for the specific analytical methods used by these laboratories.) Table 2 presents the maximum total constituent concentrations of the hazardous organic constituents detected in the landfill leachate.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (PPM) NORTH PARCEL LANDFILL LEACHATE

Constituents	Total constituent analyses
Acenaphthene	0.019
Benzene	0.175
Bis(2-ethylhexyl)phthalate	0.057
Chlorobenzene	0.240
Chloroform	0.007
1,4-Dichlorobenzene	0.017
1,2-Dichloropropane	0.083
Ethyl benzene	0.162
Fluorene	0.019
2-Methylnaphthalene	0.030
Naphthalene	5
Phenanthrene	0.008
Xylene	0.020

The oil and grease content of the single sample that Acme Fill analyzed (using "Standard Methods for the Examination of Water and Wastewater" Method 503A) was reported to be <5 ppm. Acme Fill provided test data indicating that the landfill leachate is not ignitable below 212 °F. Acme Fill also provided data showing that the pH of the landfill leachate ranged between 6.5 and 6.9. Based on analytical results provided by the petitioner, pursuant to 40 CFR 260.22, the petitioned landfill leachate was also determined not to be reactive. See 40 CFR 261.21, 261.22, and 261.23.

Acme Fill submitted a signed certification stating that the North Parcel Landfill contains approximately 140 million gallons of leachate. Acme Fill claims that this is the amount of leachate that has been generated since landfill operations at the North Parcel began. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Acme Fill's certified estimate that the volume of the petitioned landfill leachate is 140 million gallons (approximately 584,000 cubic yards).

The Agency further recognizes that should Acme Fill continue to operate its landfill the estimated volume of untreated landfill leachate generated could increase. The Agency notes, however, that an increase in waste volume will not alter the Agency's decision to deny Acme Fill's petition. As discussed in more detail later in today's notice, the Agency's basis for denial is two-fold. First, the results of the evaluation of Acme Fill's petitioned waste using the VHS model indicate that levels of certain hazardous constituents in the petitioned landfill leachate are of regulatory concern. The results of this evaluation would be the same (*i.e.*, support petition denial) even if Acme Fill had reported a larger waste volume. Second, results from the analysis of ground-water samples collected from wells that monitor Acme Fill's North Parcel Landfill indicate that the petitioned waste is contributing to ground-water contamination. The Agency notes that, regardless of the volume of untreated landfill leachate reported in Acme Fill's petition, evidence of ground-water contamination still would support the Agency's denial of the petition.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to deny Acme Fill's petition. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the representative nature of data for some percentage of the submitted petitions, and may select facilities likely to be proposed for exclusion for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for the petitioned landfill leachate and decided that disposal in a surface impoundment is the most reasonable, worst-case scenario for this waste. Under a surface impoundment management scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency evaluated Acme Fill's petitioned landfill leachate using its vertical and horizontal spread (VHS) landfill model. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). As explained below, the Agency believes that the VHS model, at this time, is adequate to evaluate the petitioned waste. The Agency requests comments on the use of the VHS model as applied to the evaluation of Acme Fill's petitioned landfill leachate.

The primary difference expected between the VHS model (used for the petitioned waste) and a model for evaluating the potential behavior of wastes managed in surface impoundments is the consideration (in the impoundment model) of hydraulic head, sorption and retardation, and clogging. Hydraulic head is expected to cause higher compliance-point concentrations.[1] Sorption and retardation and clogging, on the other hand, are expected to result in lower compliance-point concentrations of the contaminants.[2] To some extent, the mechanisms of sorption and retardation and clogging will counteract hydraulic head. Until a surface impoundment model is developed for use in delisting decision-making, it is difficult to predict what impact, if any, these competing mechanisms will have on the calculation of compliance-point concentrations. To delay petition evaluations until such time as other analytical tools (such as a surface impoundment model) are developed would result in curtailing delisting petition processing. Delay is particularly unwarranted where, as here, it is not clear that a new surface impoundment model would predict different constituent concentrations and/or change EPA's conclusion.

Further, EPA believes that the VHS model is adequate to assess the

[1] Hydraulic head tends to force leachate into the aquifer, displacing ground water, and resulting in potentially higher concentrations at the receptor well (*i.e.*, compliance point).

[2] Sorption and retardation of dissolved contaminants with the aquifer solids encountered through migration in the ground water tend to reduce the concentration of the contaminant in the aquifer. Clogging occurs in surface impoundments when either fine material filters out in the impoundment bottom materials, or fine material settles on the bottom of the impoundment. A potential result of clogging is the lowering of the hydraulic conductivity of the impoundment bottom material to that which approaches the hydraulic conductivity of clay, thus reducing the leakage of impoundment liquid into the aquifer.

reasonable worst-case disposal scenario of wastes contained in surface impoundments because the VHS model is conservative in all of its assumptions. Specifically, the VHS landfill model does not account for the likely reduction in the total concentrations of hazardous constituents occurring through degradation, thereby providing an additional margin of safety, regardless of whether the waste is disposed of in a landfill or surface impoundment. Consequently, the Agency believes that the application of the VHS model, in this case, adequately protects human health.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in samples of Acme Fill's petitioned landfill leachate for which delisting health-based levels were available. The Agency's evaluation, using Acme Fill's estimated waste volume of 584,000 cubic yards and the maximum reported total constituent concentrations (see Table 1), generated the compliance-point concentrations shown in Table 3. The Agency used total constituent concentrations as inputs to the VHS model because, as stated previously, for wastes that contain less than 0.5 percent dissolved solids, the EP leachate concentration of a constituent is considered equivalent to the total concentration of that constitutent.

The Agency did not evaluate the mobility of the remaining hazardous inorganic constituents (*i.e.*, arsenic, beryllium, mercury, selenium, and cyanide) because they were not detected using the appropriate analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (ppm) NORTH PARCEL LANDFILL LEACHATE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Antimony	0.055	0.01
Barium	1.44	10
Cadmium	0.007	0.01
Chromium	0.011	0.05
Lead	0.017	0.05
Nickel	0.044	0.7
Silver	0.005	0.05
Thallium	0.051	0.003

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The petitioned waste exhibited antimony, barium, and thallium concentrations at the compliance point above the health-based levels used in delisting decision-making. Antimony levels in one of nine samples, barium levels in two of eight samples, and thallium levels in two of nine samples failed the VHS model evaluation. The petitioned waste exhibited cadmium, chromium, lead, nickel, and silver concentrations at the compliance point below the health-based levels used in delisting decision-making. As reported in Table 1, the maximum concentration of total cyanide in Acme Fill's waste is less than 0.05 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the Agency believes that the maximum level of reactive cyanide in the petitioned waste also will be less than 0.05 ppm. Thus, the Agency considers that the concentration of reactive cyanide in the petitioned waste will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide in the waste is less than 0.05 ppm, the Agency believe that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency also used the VHS model to evaluate the mobility of the eleven hazardous organic constituents detected in Acme Fill's petitioned landfill leachate. The Agency's evaluation, using Acme Fill's estimated waste volume of 584,000 cubic yards and the maximum reported total constituent concentrations (see Table 2), generated the compliance-point concentrations shown in Table 4. The Agency used total constituent concentrations as inputs to the VHS model because, as stated previously, for wastes that contain less than 0.5 percent dissolved solids, the EP leachate concentration of a constituent is considered equivalent to the total conentration of that constituent.

TABLE 4.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (ppm) NORTH PARCEL LANDFILL LEACHATE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Benzene	0.028	0.005
Bis(2-ethylhexyl)-phthalate	0.009	0.003
Chlorobenzene	0.038	0.1
Chloroform	0.001	0.006
1,4-Dichlorobenzene	0.003	0.075
1,2-Dichloropropane	0.013	0.005
Ethyl benzene	0.026	0.7
Fluorene	0.003	0.002
Naphthalene	0.792	10
Phenanthrene	0.001	0.002
Xylene	0.003	10

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The petitioned waste exhibited benzene, bis(2-ethylhexyl)-phthalate, 1,2-dichloropropane, and fluorene concentrations at the compliance point above the health-based levels used in delisting decision-making. Specifically, these four constituents failed the VHS model evaluation for the following number of samples analyzed: benzene (1 of 8 samples), bis(2-ethylhexyl)phthalate (1 of 5 samples), 1,2-dichloropropane (2 of 8 samples), and fluorene (1 of 3 samples). The leachate exhibited chlorobenzene, chloroform, 1,4-dichlorobenzene, ethyl benzene, naphthalene, phenanthrene, and xylene levels at the compliance point below the health-based levels used in delisting decision making.

The Agency believes that Acme Fill's analyses and presentation may be insufficient to demonstrate that the North Parcel Landfill contains no other hazardous constituents. Specifically, the Agency is uncertain whether Acme Fill has fully described the solid wastes that have been disposed of in the North Parcel Landfill. Because all solid wastes disposed of in the North Parcel Landfill are also considered hazardous in accordance with 40 CFR 261.3(a)(2)(iv) (*i.e.*, the mixture rule), Acme Fill should have also demonstrated that these wastes did not contain additional hazardous constituents which could have affected the composition of the

petitioned waste. The Agency typically requires petitioners to submit analytical results or mass balance calculations for constituents expected to be present in petitioned wastes (*e.g.*, analytical data for those constituents listed in 40 CFR part 261, appendix VIII). The Agency, however, did not request Acme Fill to provide further information about additional hazardous constituents in the North Parcel Landfill leachate because sufficient data existed to support a proposed denial of the petition.

The Agency has reviewed the ground-water monitoring information submitted by Acme Fill, and information obtained from State of California and EPA Regional authorities. State and EPA Regional authorities have informed EPA Headquarters that the ground-water monitoring system at the North Parcel Landfill is not compliant with RCRA regulations. In any case, 1986 ground-water monitoring data submitted by Acme Fill for the 25 wells installed to monitor the North Parcel Landfill indicate that the petitioned leachate is contributing to ground-water contamination. While the ground-water monitoring system is not compliant with RCRA regulations and may not be adequate to delineate the full impact of the landfill on the ground water, EPA believes that the data submitted clearly show that the petitioned waste has contaminated ground water. Table 5 presents a list of the hazardous constituents that were detected at concentrations exceeding the health-based levels used in delisting decision-making in ground-water samples collected from North Parcel Landfill monitoring wells, and presents the maximum concentration at which each constituent was detected.

During 1986, Acme Fill monitored the North Parcel Landfill wells quarterly for arsenic, barium, cadmium, chromium, lead, selenium, and silver. Of the samples analyzed, the following is the number of samples that contained the given hazardous constituent at a concentration exceeding the delisting health-based level: arsenic—4; barium—70; cadmium—6; chromium—2; lead—18; and silver—6. During the second quarter of 1986, samples from three North Parcel Landfill monitoring wells were analyzed for 105 organic contaminants. Concentrations of benzene and tetrachloroethylene were detected at concentrations exceeding the health-based levels used in delisting decision-making in one of the wells, as reported in Table 5.

TABLE 5.—MAXIMUM CONCENTRATIONS OF HAZARDOUS CONSTITUENTS DETECTED IN GROUND WATER MONITORING WELLS ABOVE DELISTING HEALTH-BASED LEVELS (ppm) North Parcel Landfill

Constituents	Maximum detected ground-water concentrations	Levels of regulatory concern [1]
Arsenic	0.149	0.05
Barium	11.3	1.0
Benzene	0.014	0.005
Cadmium	0.08	0.01
Chromium	0.08	0.05
Lead	4.9	0.05
Selenium	0.1	0.01
Silver	0.11	0.05
Tetrachloroethylene	0.016	0.005

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

5. Conclusion

The Agency believes that Acme Fill has not demonstrated that its petitioned landfill leachate is not hazardous. The Agency considers the sampling and analysis program conducted in support of the petition to be incomplete. The Agency is aware that the collected samples of the landfill leachate may not be completely representative of the petitioned landfill leachate. Furthermore, EPA is not convinced that all likely hazardous constituents have been identified and analyzed in the leachate. However, the Agency believes that the samples are representative of at least a portion of the petitioned waste and that the analytical data submitted provide a clear basis for denial of the petition. Specifically, the data provided by Acme Fill indicate that the petitioned landfill leachate contains concentrations of antimony, barium, benzene, bis (2-ethylhexyl)—phthalate, 1,2-dichloropropane, fluorene, and thallium that exceed the Agency's levels of regulatory concern. In addition, the ground-water monitoring results submitted by Acme Fill indicate that the landfill leachate is contributing to ground-water contamination. Specifically, arsenic, barium, benzene, cadmium, chromium, lead, selenium, silver, and tetrachloroethylene have been detected at concentrations exceeding the health-based levels used in delisting decision-making in ground-water samples collected from North Parcel Landfill monitoring wells. The Agency proposes to deny Acme Fill Corporation's petition for exclusion of its leachate described in its petition as EPA Hazardous Waste Nos. U002, U080, U213, and U226 and contained in its North Parcel Landfill at its Martinez, California facility. This waste should continue to be subject to regulation under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition. Because a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedures Act, pursuant to 50 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submitting and during review of the petition, this facility should have continued to handle its waste as hazardous. The denial of the petition means that they are to continue managing their waste as hazardous in the manner in which they have been doing, economically, and otherwise. There is no additional economic impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility

Act, 5 USC 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 USC 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Section 3001 RCRA, 42 U.S.C. 6921

Dated: April 12, 1990.

Mary A. Gade,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90–10100 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA–6989]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT:

Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations rescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; or itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 67.4 [Amended]

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Birmingham, Jefferson County.	Jail Branch	At mouth	*559	*559
			About 350 feet upstream of mouth	*559	*560
			Just upstream of Norfolk Southern Railway	*573	*567
			Just downstream of 6th Avenue	*576	*575
		Jail Branch Tributary	At mouth	*573	*568
			Just downstream of 6th Avenue	*588	*586

Maps available for inspection at the Community Planning Department, 710 North 20th Street, Birmingham, Alabama.

Send comments to The Honorable Richard Arrington, Jr., Mayor, City of Birmingham, 710 North 20th Street, Birmingham, Alabama 35203.

Alabama	Unincorporated areas, Madison County.	Flint River	Just downstream of Big Cove Road	*587	*587
			Just downstream of Alternate U.S. Highway 431.	None	*601
			About 3.8 miles upstream of Alternate U.S. Highway 431.	None	*611

Maps available for inspection at the Madison County Engineering Department, 814 Coor Avenue, Huntsville, Alabama.

Send comments to The Honorable Mike Gillespie, Chairman, County Commissioners, Madison County Courthouse, Huntsville, Alabama 35801.

Alabama	Town of Owens Cross Roads, Madison County.	Flint River	Just downstream of Big Cove Road	*587	*587
			About 3,600 feet upstream of Big Cove Road	None	*588

Maps available for inspection at the Town Clerks Office, P.O. Box 158, Owens Cross Roads, Alabama.

Send comments to The Honorable Robert E. Layne, Mayor, Town of Owens Cross Roads, P.O. Box 158, Owens Cross Roads, Alabama 35763.

Arizona	Coconino County, unincorporated areas.	Switzer Canyon Wash	Approximately 1,100 feet upstream of San Francisco Street.	None	*7,013
			Approximately 2,075 feet upstream of San Francisco Street.	None	*7,020
			Approximately 2,975 feet upstream of San Francisco Street.	None	*7,026

Maps are available for review at the Coconino County Department of Community Development, 219 East Cherry Avenue, Flagstaff, Arizona.

Send comments to The Honorable Paul J. Babbitt, Jr., Chairman, Coconino County Board of Supervisors, Administrative Center, 219 East Cherry Avenue, Flagstaff, Arizona 86001.

Arkansas	Hot Springs, city, Garland County.	Spencer Bay	Entire shoreline within community	None	*318
		Ouachita River (Lake Hamilton).	Entire shoreline within community	None	*404

Maps available for inspection at the City Hall, 133 Convention Street, Hot Springs, Arkansas.

Send comments to The Honorable John Starr, Mayor of the City of Hot Springs, Garland County, P.O. Box 700, Hot Springs, Arkansas 71901.

California	Napa County, unincorporated areas.	Napa River	Approximately 10,640 feet downsteam of Yountville Cross Road Bridge.	*82	*82
			Approximately 5,340 feet downstream of Yountville Cross Road Bridge.	*90	*87
			Just downstream of Yountville Cross Road Bridge.	*97	*94
			Approximately 6,060 feet upstream of Yountville Cross Road Bridge.	*111	*111

Maps are available for review at the Office of the Director of Public Works, 1195 Third Street, Room 201, Napa, California.

Send comments to The Honorable Robert White, Chairman, Napa County Board of Supervisors, 1195 Third Street, Room 310, Napa, California 94559.

California	City of Rocklin, Placer County.	Sucker Ravine	At confluence with Secret Ravine	*232	*232
			Approximately 950 feet upstream of confluence with Secret Ravine.	*241	*238
			Approximately 1,015 feet upstream of confluence with Secret Ravine.	*242	*245
			Approximately 1,250 feet upstream of confluence with Secret Ravine.	*250	*254
			Approximately 2,230 feet upstream of confluence with Secret Ravine.	*258	*255
			Approximately 3,290 feet upstream of confluence with Secret Ravine.	*258	*258
			Approximately 3,410 feet upstream of confluence with Secret Ravine.	*259	*261
			Approximately 4,030 feet upstream of confluence with Secret Ravine.	*265	*265

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 4,760 feet upstream of confluence with Secret Ravine.	*265	*266
			Approximately 5,840 feet upstream of confluence with Secret Ravine.	*270	*270
			Approximately 6,530 feet upstream of confluence with Secret Ravine.	*275	*273
			Approximately 7,100 feet upstream of confluence with Secret Ravine.	*277	*278
			Approximately 7,500 feet upstream of confluence with Secret Ravine.	*279	*283
			Approximately 9,340 feet upstream of confluence with Secret Ravine.	*286	*285
			Approximately 10,600 feet upstream of confluence with Secret Ravine.	*293	*292
			Approximately 10,800 feet upstream of confluence with Secret Ravine.	*293	*293
			Approximately 11,840 feet upstream of confluence with Secret Ravine.	*297	*296
			Approximately 12,340 feet upstream of confluence with Secret Ravine.	*300	*300
			Approximately 12,930 feet upstream of confluence with Secret Ravine.	*None	*302
Maps are available for review at the City of Rocklin Engineering Department, 4060 Rocklin Road, Rocklin, California. Send comments to The Honorable Clarke Dominguez, Mayor, City of Rocklin, P.Q. Box 1138, Rocklin, California 95677.					
California	Town of Yountville, Napa County.	Napa River	Intersection of Washington Street and Land Lane.	*85	*85
			Intersection of Vista Drive and Vineyard Circle	*90	*88
			Just upstream of Yountville Cross Road	*98	*94
			Just downstream of Yount Mill Road	*100	*99
Maps are available for review at Town Hall, 6550 Yount Street, Yountville, California. Send comments to The Honorable Robert E. Myers, Town Administrator, P.O. Box 2590, Yountville, California 94599.					
Colorado	Town of Erie, Boulder and Weld Counties.	Coal Creek	Just upstream of Union Pacific Railroad	*5,022	*5,022
			Approximately 10,500 feet upstream of Perry Street.	None	*5,052
			Approximately 1,250 feet downstream of confluence with Cottonwood Extension Ditch.	None	*5,064
			At west end of East-West Runway, TriCounty Airport.	None	*5,084
			Approximately 4,100 feet upstream of East-West Runway, TriCounty Airport.	None	*5,092
Maps are available for review at Town Hall, P.O. Box 100, 645 Holbrook, Erie, Colorado. Send comments to The Honorable Charles D. Dolphin, Mayor, Town of Erie, P.O. Box 100, Erie, Colorado 80516.					
Michigan	Charter township of Delhi, Ingham County.	Mud Lake Drain	At mouth	*837	*839
			Just downstream of Aurelius Road	*843	*842
Maps available for inspection at the Delhi Charter Township, 1974 Cedar Street, Holt, Michigan, Attention: Rick Royston, Building Inspector. Send comments to The Honorable Richard H. Bacon, Township Supervisor, Delhi Charter Township, 1974 Cedar Street, Holt, Michigan 48842.					
Michigan	City of Lansing, Ingham, Eaton and Clinton Counties.	Mud Lake Drain	Just upstream of Aurelius Road	*843	*842
			Just upstream of Conrail	*849	*844
			Just downstream of Interstate 96	*863	*863
Maps available for inspection at the City of Lansing Planning Division, 119 N. Washington, Lansing, Michigan. Send comments to The Honorable Terry J. McKane, Mayor, City of Lansing, City Hall, Lansing, Michigan 48933.					
New York	Saugerties (town), Ulster County.	Kate Yaeger Kill	At Band Camp Road	None	*341
			Approximately .5 mile upstream of Brady Road	None	*514
Maps available for inspection at the Town Hall, Main Street, Saugerties, New York. Send comments to The Honorable Gloria Schovel, Supervisor of the Town of Saugerties, Ulster County, Town Hall, Main Street, Saugerties, New York 12477.					
North Carolina	Town of Dillsboro, Jackson County.	Scott Creek	Just upstream of U.S. Route 23	None	*1973
			About 0.41 mile upstream of SR 1381	None	*1993
Maps available for inspection at the Town Hall, P.O. Box 54, Dillsboro, North Carolina. Send comments to The Honorable Wade Wilson, Mayor, Town of Dillsboro, Town Hall, P.O. Box 54, Dillsboro, North Carolina 28725.					
Oklahoma	Muskogee, city, Muskogee County.	Sam Creek	At State Route 16 downstream corporate limits	None	*529
			Approximately 0.3 mile downstream of Gulick Avenue.	None	*539

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Sam Creek, Tributary B	At confluence with Sam Creek	None	*536
			Approximately 0.56 mile upstream of confluence with Sam Creek.	None	*549
		Coody Creek	Approximately 650 feet upstream of Hancock Street.	None	*513
			Approximately 250 feet downstream of Union Pacific Railroad.	None	*539
		Corta Creek	Approximately 0.2 mile downstream of Gulick Street.	None	*530
			Approximately 0.8 mile downstream of Cherokee Drive.	None	*541

Maps available for inspection at the City Hall, 3rd & Okmulgee, Muskogee, Oklahoma.
Send comments to Mr. Clay McAlpine, Muskogee City Engineer, Muskogee County, P.O. Box 1927, Muskogee, Oklahoma 74402.

Oklahoma	Potum, Town, Muskogee County.	Porum Creek, Tributary A	At Delaware Avenue	None	*582
			Approximately 1,000 feet upstream of Cherokee Avenue.	None	*589

Maps available for inspection at the City Hall, 2nd & Seminole, Porum, Oklahoma.
Send comments to The Honorable Maggie R. Hodges, Mayor of the Town of Porum, Muskogee County, P.O. Box 180, Porum, Oklahoma 74455.

Pennsylvania	Lower Moreland, township, Montgomery County.	Pennypack Creek	Approximately 550 feet downstream of corporate limits.	*115	*117
			Approximately 250 feet upstream of corporate limits.	*139	*141
		Huntingdon Valley Creek	At confluence with Pennypack Creek	*117	*120
			At downstream side of Warfield Lane	*264	*265

Maps available for inspection at the Township Building, 640 Red Lion Road, Huntingdon Valley, Pennsylvania.
Send comments to The Honorable Kurt G. Mayer, President of the Township of Lower Moreland Board of Commissioners, Montgomery County, 640 Red Lion Road, Huntingdon Valley, Pennsylvania 19006.

Tennessee	City of Knoxville, Knox County	Whites Creek	At mouth	*955	*955
			Just downstream of Nora Road	*956	*957
			Just downstream of Greenway Drive	*965	*965

Maps available for inspection at the Department of Engineering, P.O. Box 1631, Knoxville, Tennessee.
Send comments to The Honorable Victor Ashe Mayor, City of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901.

Texas	Bardera County, unincorporated areas.	Medina River	Approximately .89 mile upstream of confluence of San Jullian Creek.	None	*1,201
			Approximately .4 mile upstream of the Mayan Ranch Road.	*1,244	*1,252

Maps available for inspection at the County Courthouse, 500 Main Street, Bandera, Texas.
Send comments to The Honorable Ray F. Lauer, County Judge, County Courthouse, 500 Main Street, P.O. Box 877, Bandera, Texas 78003.

Texas	Denison, city, Grayson County.	Iron Ore Creek	Approximately 2.8 miles upstream of U.S. Route 69.	None	*583
			Just upstream of Fanin Avenue	None	*604
			Approximately 400 feet upstream of the confluence with Ellsworth Branch.	None	*626
			Approximately .8 mile downstream of Loy Lake Road.	None	*640
		Loy Creek	Approximately 100 feet upstream of the confluence with Iron Ore Creek.	None	*625
			Approximately 675 feet upstream of Loy Lake Road.	None	*659
		Waterloo Creek	Approximately 600 feet upstream of the confluence with Iron Ore Creek.	None	*620
			At Flowers Drive	None	*620
		Red River	Approximately 2.7 miles downstream of Burlington Northern Railroad.	None	*530
			Approximately .8 mile upstream of U.S. Routes 69 and 75.	None	*534

Maps available for inspection at the City Hall, 108 Main, Denison, Texas.
Send comments to The Honorable Larry Cruise, Denison City Manager, Grayson County, 108 West Main, Denison, Texas 75020-0347.

Texas	Lamesa, city, Dawson County.	Sulphur Springs Draw	At upstream side of Avenue S	None	*2,949
			At upstream corporate limits	None	*2,949

Maps available for inspection at the City Hall, 310 S. Main, Lamesa, Texas.
Send comments to The Honorable Don Bethel, Mayor of the City of Lamesa, Dawson County, 310 S. Main Street, Lamesa, Texas 79331.

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	# Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Texas	Lockhart, city, Caldwell County.	Town Branch	At downstream corporate limits	*439	*441
			At a point approximately 920 feet downstream of Stueve Road.	*532	*533
		T-B1	At confluence with Town Branch	None	*522
			At MK&T Railroad	None	*531
		Mebane Creek	Approximately 0.39 mile downstream of State Highway 20.	None	*512
			Approximately 65 feet upstream of Clear Fork Road.	None	*538

Maps available for inspection at the Municipal Building, 308 West San Antonio, Lockhart, Texas.
Send comments to The Honorable Joe Michie, Manager of the City of Lockhart, Caldwell County, Municipal Building, 308 West San Antonio, Lockhart, Texas 78644.

Texas	Sherman, city, Grayson County.	Stream B	Approximately 50 feet upstream of Union Pacific Railroad.	None	*726
			Approximately 1,800 feet upstream of Tuck Street.	None	*745
		East Fork Post Oak Creek	Approximately 100 feet upstream of U.S. Route 82.	None	*769
			Approximately 75 feet upstream of Pecan Grove Road.	None	*771
		Choctaw Creek	Approximately 1 mile downstream of Burlington Northern Railroad.	None	*679
			At Moore Road	None	*689

Maps available for inspection at the City Hall, 400 North Rusk, Sherman, Texas.
Send comments to The Honorable Dean Gilbert, Mayor of the City of Sherman, Grayson County, 400 North Rusk, Sherman, Texas 75097.

Virginia	Tazewell County, unincorporated areas.	Clinch River	Approximately .15 mile downstream of Jenkins Road.	*1,911	*1,912
			Approximately .6 mile upstream of Jenkins Road.	*1,915	*1,916

Maps available for inspection at the Tazewell County Offices, 315 School Street, Tazewell, Virginia.
Send comments to The Honorable LaVern Bechtel, Tazewell County Administrator, 315 School Street, Box 2, Tazewell, Virginia 24651.

Issued: April 19, 1990.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 90-10057 Filed 4-30-90; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 58 and 160

[CGD 79-168]

RIN 2115-AA45

Lifesaving Equipment; Launching Equipment for Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: On February 13, 1986, the Coast Guard published in the **Federal Register** (51 FR 5377) a Notice of Proposed Rulemaking (NPRM) containing design and performance specifications that covered both launching devices and automatic disengaging devices for liferafts in accordance with the 1983 amendments to Chapter III of the 1974 Safety of Life at Sea Convention (SOLAS 74/83). Now it is withdrawing this rulemaking [CGD 79-168] because, since the publication of the NPRM, the Sub-Committee on Lifesaving, Search and Rescue of the International Maritime Organization (IMO) has prepared in draft new test procedures that cover such devices as part of a continuing project to revise IMO Assembly Resolution A.521(13) (Testing and Evaluation of Life-Saving Appliances). These procedures are based largely upon standards already applicable throughout Europe (where most of these devices are manufactured and sold), and differ substantially from those of the rules proposed in the NPRM. Rather than impose rules that would soon come under extensive revision to harmonize them with the relevant standards of SOLAS 74/83, we will address these issues in a new rulemaking after the revision of Resolution A.521(13) is complete.

DATES: This withdrawal is effective May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt J. Heinz, Survival Systems Branch, (202) 267-1444.

Dated: April 24, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-10003 Filed 4-30-90; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 55, No. 84
Tuesday, May 1, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board (ATBCB).

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (ATBCB or Access Board) has scheduled a business meeting to take place from 10:30 a.m. to 12:30 p.m., on Wednesday, May 9, 1990, at the Mayflower Hotel, Massachusetts room, 1127 Connecticut Avenue, NW., Washington, DC.

DATES: Wednesday, May 9, 1990—10:30 a.m. to 12:30 p.m. (Business Meeting).

Matters to be considered: Agenda items include: Approval of the March 14, 1990 Board Meeting Minutes; Complaint Status Report; American With Disabilities Act Update; Committee Reports; Technical Programs Priorities for FY 1991—Transportation Focus Year #1 (closed); Preliminary Funding Consideration of Technical Programs for FY 1992—Transportation Focus Year #2 (closed); FY 1990 Budget Reprogramming; Ad Hoc Committee Report—Board Goals and Objectives; FY 1992 Budget Recommendations; Communications During Rulemaking; ATBCB Comments on section 504 Airport NPRM and Air Carrier Access Act SNPRM and ANPRM; Department of Transportation's NPRMs on (1) Uniform Handicapped Parking System, and (2) Accessible Buses and Supplemental Paratransit; Reauthorization of Rehabilitation Act of 1973—Establishment of an Ad Hoc Committee to Study Legislative Changes to section 502; and, Election of Officers.

FOR FURTHER INFORMATION CONTACT: For information please contact Barbara A. Gilley, Executive Officer, (202) 653–7834 (voice or TDD).

SUPPLEMENTARY INFORMATION: Committee meetings will be held on Tuesday, May 8, 1990 in Washington, DC as follows:

9:00–11:00 am: ATBCB Offices, 1111 18th Street, NW., suite 501, Ad Hoc Committee on Communication Barriers.

1:30–3:00 pm: Department of Transportation, 400 7th St., SW., rm 2230, Technical Programs Committee.

3:15–4:15 pm: Department of Transportation, 400 7th St., SW., room 2230, Planning and Budget Committee.

4:30–5:30 pm: Department of Transportation, 400 7th St., SW., rm 2230, Ad Hoc Committee on Public Affairs.

Committee meetings will also be held on Wednesday, May 9, 1990 as follows:

8:30–9:30 am: Mayflower Hotel, 1127 Connecticut Avenue, NW., Massachusetts room, Executive Committee.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 90–10027 Filed 4–30–89; 8:45 am]

BILLING CODE 6820-BP-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

April 27, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- Animal and Plant Health Inspection Service, Viruses-Serums-Toxins Regulations, APHIS 2001, 2003, 2005, 2007, 2008, 2008A, 2015 and APHIS 2020. Recordkeeping; On occasion. Businesses or other for-profit; Non-profit institutions; 24,825 responses; 60,786 hours; not applicable under 3504(h). David A. Espeseth, (301) 436–8245.

- Animal and Plant Health Inspection Service, Orabanche Ramosa Mail Survey, PPQ 112, Annually. Farms; 200 responses; 100 hours; not applicable under 3504(h), Thomas Flanigan (301) 436–8247.

New Collection

- Food Safety and Inspection Service. Ingredients that may be designated as natural flavors, natural flavorings, flavors or flavorings when used in meat and poultry products. On occasion. Businesses or other for-profit; Small businesses or organizations; 100,000 responses; 3,333 hours; not applicable under 3504(h). Roy Purdie, Jr. 447–5372.

Donald E. Hulcher,

Acting Department Clearance Officer.

[FR Doc. 90–10062 Filed 4–30–90; 8:45 am]

BILING CODE 3410-01-M

Federal Grain Inspection Service

Designation of Central Illinois (IL) Agency and Designation Renewal of Plainview (TX) Agency

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation of Central Illinois Grain Inspection, Inc. and the designation renewal of Plainview Grain Inspection and Weighing Service, Inc. (Plainview) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: June 1, 1990.

ADDRESSES: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Gary R. Weirman dba Bloomington Grain Inspection Department's (Bloomington) and Plainview's designations terminate on May 31, 1990, and requested applications for official agency designation to provide official services within specified geographic areas in the December 1, 1989 **Federal Register** (54 FR 49785). Applications were to be postmarked by January 2, 1990. Gary R. Weirman, proposing to establish a new corporation, Central Illinois Grain Inspection, Inc. (Central Illinois), was the only applicant for designation in that area and applied for the entire area currently assigned to Bloomington. Plainview was the only applicant for designation in its area and applied for designation in the entire area currently assigned to that agency.

The Service announced the applicant names in the February 1, 1990, **Federal Register** (55 FR 3429) and requested comments on the applicants for designation. Comments were to be postmarked by March 19, 1990. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Central Illinois is able to provide official services in the geographic area for which the service is granting its designation, and Plainview is able to provide official services in the geographic area for which the Service is renewing its designation. Effective June 1, 1990, and terminating May 31, 1993, Central Illinois and Plainview are designated to provide official inspection services in their specified geographic areas as previously described in the December 1 **Federal Register.**

Interested persons may obtain official services by contacting Central Illinois at (309) 827–7121, and Plainview at (806) 293–1364.

Authority: Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: April 25, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–10063 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Central Iowa (IA) Agency and the States of Maine (ME) and Montana (MT)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Central Iowa Grain Inspection Service, Inc. (Central Iowa), the Maine Department of Agriculture, Food and Rural Resources (Maine), and the Montana Department of Agriculture (Montana).

DATES: Comments must be postmarked on or before June 15, 1990.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090–6454. *SprintMail* users may respond to [PMARSDEN/FGIS/USDA]. *Telecopier* users may send responses to the automatic telecopier machine at (202) 447–4628, attention: Paul Marsden. All comments received will be available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within official services within specified geographic areas in the March 1, 1990, **Federal Register** (55 FR 7349). Applications were to be postmarked by April 1, 1990. Central Iowa, Maine, and Montana were the only applicants for designation in those areas, and each applied for the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register,** and the applicant will be informed of the decision in writing.

Authority: Public Law 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: April 25, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–10064 Filed 4–30–90; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants To Provide Official Services in the Geographic Areas Currently Assigned to the Hastings (NE) Agency and the State of New York (NY)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to the specified agencies. The official agencies are Hastings Grain Inspection, Inc. (Hastings), and New York State Department of Agriculture and Markets (New York).

DATES: Applications must be postmarked on or before May 31, 1990.

ADDRESSES: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Department Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Hastings, located at 306 East Park Street, Hastings, NE 68901, and New York located at 2 Winners Circle, Capital Plaza, Albany, NY 12235 were designated under the Act of January 1, 1988, as official agencies, to provide official inspection services.

The designation of each of these official agencies terminates on December 31, 1990. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Hastings, in the State of Nebraska, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Nebraska State line from the Western Sioux County line east to the eastern Knox County line;

Bounded on the East by the eastern and southern Knox County lines; the eastern Antelope County line; the northern Madison County line east to U.S. Route 81; U.S. Route 81 south to the southern Madison County line; the southern Madison County line; the eastern Boone, Nance, and Merrick County lines; the Platte River southwest; the eastern Hamilton County line; the northern and eastern Fillmore County lines; the southern Fillmore County line west to U.S. Route 81; U.S. Route 81 south to State Highway 8; State Highway 8 west to County Road 1 mile west of U.S. Route 81; County Road south to southern Nebraska State line;

Bounded on the South by the southern Nebraska State line form County Road 1 mile west of U.S. Route 81, west to the western Dundy County line;

Bounded on the West by the western Dundy, Chase, Perkins, and Keith County lines; the southern and western Garden County lines; the southern Morrill County line west to U.S. Route 385; U.S. Route 385 north to the southern Box Butte County line; the southern and western Sioux City County lines north to the northern Nebraska State line.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Farmers Coop, and Big Springs Elevator, both the Big Springs, Deuel County (located inside Denver Grain Inspection's area); and Farmers Cooperative Grain Company, and Wagner Mills, Inc., both in Columbus, Platte County (located inside Fremont Grain Inspection Department, Inc.'s area).

The geographic area presently assigned to New York, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of New York, except those export port locations within the State which are serviced by the Service.

Interested parties, including Hastings and New York, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning January 1, 1991, and ending December 31, 1993. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: April 25, 1990.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 90–10065 Filed 4–30–90; 8:45 am]

BILLING CODE 3410-EN-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Colorado Advisory Committee to the Commission will convene a meeting on May 14, 1990 from 1 p.m. to 3 p.m. at the Executive Tower Inn, 1405 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan Committee activities and discuss project ideas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Gwendolyn Thomas or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 25, 1990.

Wilfredo J. Gonzalez,

Staff Director.

[FR Doc. 90–10072 Filed 4–30–90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

Technical Details of National Trade Data Bank; Open Meetings

AGENCY: Office of the Under Secretary for Economic Affairs, U.S. Department of Commerce.

ACTION: Notice of meetings.

SUMMARY: Two meetings will be held on certain technical aspects of the National Trade Data Bank (NTDB) for software developers and others wishing to write computer programs assessing the NTDB.

DATES: May 18, 1990 and June 15, 1990, 10 a.m.

ADDRESS: Room 4830, HCH Bldg. on Friday, May 18, 1990 and room 4830, HCH Bldg. Friday, June 15, 1990.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, 377–1405.

SUPPLEMENTARY INFORMATION: Pursuant to section 5404, or part I of subtitle E, of title V of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4901–4913), the Commerce Department will hold meetings on certain technical aspects of the design of the NTDB.

The May 18, 1990 meeting will concern technical details and specifications of the magnetic tape and telecommunication transmission for the "premium" service as described in **Federal Register** notice, Docket No. 90517–9117, Vol. 54, No. 159, p. 34204, August 18, 1989.

The June 15, 1990 meeting will cover record layouts, indexes, and search concepts for the Compact Disk-Read

Only Memory (CD–ROM) to be issued under the standard service.

The meetings are intended for technical experts on these two aspects of the NTDB.

Software developers "toolkits" will be made available to attendees. These will include record layouts, specifications for access programs and subroutines, and magnetic tape containing sample data. There will be a charge of $125.00 for the magnetic tape.

Mark W. Plant,

Deputy Under Secretary for Economic Affairs.

[FR Doc. 90–10000 Filed 4–30–90; 8:45 am]

BILLING CODE 3510-EA-M

Bureau of Export Administration

Action Affecting Export Privilege; Maloney Pipeline Systems, Inc.

Order

In the Matter of: Maloney Pipeline Systems, Inc., 250 Meadowfern Drive, Suite 128, Houston, Texas 77067, Respondent.

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), has notified Maloney Pipeline Systems, Inc. (hereinafter referred to as Maloney) of its intent to issue a Charging Letter against Maloney alleging that Maloney violated the provisions of § 787.5 of the Regulations in that on 11 separate occasions between December 7, 1984 and March 12, 1986, Maloney made false or misleading statements of, or concealed, material facts on export control documents, as defined in § 770.2 of the Regulations, by stating that the oil and gas drilling commodities being exported by Maloney from the United States were for ultimate use and destination in Singapore, or words to that effect, when that was not true. Rather, it is alleged that the commodities were not for ultimate use in Singapore, but were to be installed on a Soviet-owned ship which was to be stationed or anchored off the coast of Vietnam in the South China Sea.

Whereas, the Department and Maloney have entered into a Consent Agreement whereby they agreed to settle the matter by the Department's denying Maloney's export privileges for five years;

The terms of the Consent Agreement having been approved by me;

Therefore, it is ordered:

First, Maloney Pipeline Systems, Inc., 250 Meadowfern Drive, suite 128, Houston, Texas 77067 and all its successors, assigns, officers, partners, representatives, agents and employees, shall be denied, for a period of five years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individually validated export licenses in which Maloney appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Maloney's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Maloney is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Maloney or any related person, or whereby Maloney or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Maloney or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment or diversion or any commodity or technical data exported or to be exported from the United States. Successors, assigns, officers, partners, representatives, agents and employees, shall be denied, for a period of five years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

Second, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served on Maloney and published in the **Federal Register.**

This constitutes final agency action in this matter.

Dated: April 23, 1990.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 90–10074 Filed 4–30–90; 8:45 am]

BILLING CODE 3510-DT-M

Action Affecting Export Privileges; Charles J. Mentz

Order

In the Matter of: Charles J. Mentz, P.O. Box 640, Mineral Wells, Texas 76067, Respondent

Whereas, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), has notified Charles J. Mentz (hereinafter referred to as Mentz) of its intent to initiate an administrative proceeding against him alleging that Mentz violated the provisions of § 787.5 of the Regulations in that on 11 separate occasions between December 7, 1984 and March 12, 1986, Mentz made false or misleading statements of, or concealed,

material facts on export control documents, as defined in § 770.2 of the Regulations, by stating that the oil and gas drilling commodities being exported by Mentz from the United States were for ultimate use and destination in Singapore, or words to that effect, when that was not true. Rather, it is alleged that the commodities were not for ultimate use in Singapore, but were to be installed on a Soviet-owned ship which was to be stationed or anchored off the coast of Vietnam in the South China Sea.

Whereas, the Department and Mentz have entered into a Consent Agreement whereby they agreed to settle the matter by Mentz's paying to the Department a civil penalty of $2,000 and by Department's denying Mentz's export privileges for two years, portions of which are suspended as set forth below;

The terms of the Consent Agreement having been approved by me;

Therefore, it is ordered:

First, Charles J. Mentz, P.O. Box 640, Mineral Wells, Texas 76067 and all his successors, assigns, officers, partners, representatives, agents and employees, shall, for a period of two years from the date of entry of this Order, be denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

A. All outstanding individually validated export licenses in which Mentz appears or participates, in any manner of capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Mentz's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

B. Without limiting the generality of the foregoing, participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control documents; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

C. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which Mentz is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

D. No person, firm, corporation, partnership or other business organziation, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data subject to the Act and the Regulations, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Mentz or any related person, or whereby Mentz or any related person may obtain any benefit therefrom or have any interst or participation therein, directly or indirectly: (a) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any U.S.-origin commodity or technical data exported in whole or in part, or to be exported by, to, or for Mentz or any related person denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States. Successors, assigns, officers, partners, representatives, agents and employees, shall be denied, for a period of two years from the date of this Order, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving the export of U.S.-origin commodities or technical data from the United States or abroad.

E. As authorized by § 788.16(c) of the Regulations, the denial period herein provided for against Mentz shall be suspended for a period of 23 months beginning one month from the date of entry of this Order and shall thereafter be waived, provided that, during the period of applicable suspension, Mentz has not committed any violation of the Act or any regulation, order or license issued under the Act.

Second, Mentz shall pay to the Department the amount of $2,000 within 30 days of the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

Third, that the proposed Charging Letter, the Consent Agreement and this Order shall be made available to the public. A copy of this Order shall be served on Mentz and published in the **Federal Register**.

This constitutes final agency action in this matter.

Dated: April 23, 1990.

Quincy M. Krosby,

Assistant Secretary for Export Enforcement.

[FR Doc. 90-10076 Filed 4-30-90; 8:45 am]

BILLING CODE 3510-01-M

Export Administration

[Docket Nos. 9116-01, 9116-02]

Philip Teik Jan Tai Individually and Doing Business As American Semiconductor, Inc.; Order

On March 23, 1990, the Administrative Law Judge entered his Recommended Decision and Order in the above-mentioned matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the Administrative Law Judge.

This constitutes final agency action in this matter.

Dated: April 23, 1990.

Dennis Kloske,

Under Secretary for Export Administration.

Decision and Order

Preliminary Statement

In the Matter of: Philip Teik Jan Tai individually and doing business as American Semicondutor, Inc. Respondent

Appearance for Respondent: S. "Cy" Unpingco, Pacific Lawyers Group, 111 N. Market Street, Third Floor, San Jose, California 95113.

Appearance for Agency: Louis Rothberg, Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th St. & Constitution Ave., NW., Washington, DC 20230.

In a charging letter dated May 30, 1989, the Office of Export Enforcement alleged that the Respondent, Philip Teik

Jan Tai, individually and doing business as American Semiconductor, Inc. (hereinafter collectively referred to as Tai), conspired and attempted to violate the Export Administration Act of 1979 (50 U.S.C.A. App. 2401–2420), as amended, (the Act), and the Export Administration Regulations (the Regulations). It is alleged that the conspiracy was to export U.S.-export origin computer equipment from the United States to Hong Kong without first obtaining the validated export license required by § 772.1(b) of the Regulations. By participating in this conspiracy, it is alleged that Respondent committed violations of §§ 787.3(a), 787.3(b), 787.5 and 787.6 of the Regulations.

The charging letter alleged that Thai conspired with Hua Ko Electronics Company, Ltd. (Hua Ko), Ji Wei Sun, and Chi Pak Lui, individually and doing business as Micro Mass Systems Corporation, Ltd. (Micro Mass), to export U.S.-origin commodities and technical data from the United States to Hong Kong without obtaining the required validated export license; that Tai exported from the United States to Hong Kong U.S.-origin commodities and technical data without first obtaining the validated export license required; that Tai misrepresented that Micro Mass was the ultimate consignee and purchaser of the commodities and technical data exported, whereas the commodities and technical data were actually purchased by and were ultimately destined to Hua Ko; and finally that on two occasions Tai attempted to export from the United States to Hong Kong U.S.-origin commodities and technical data without first obtaining from the Agency the validated export license required.

The charging letter alleged that Tai committed a total of five violations of the Regulations (one each of §§ 787.3(b), 787.5, and 787.6 and two of § 787.3(a)), each of which involved U.S.-origin commodities controlled under section 5 of the Act for national security reasons.

Tai's answer raised the affirmative defense of the statute of limitations generally. The statute of limitations contained in 28 U.S.C. 2462 applies to the enforcement, the Act, and the Regulations. It requires that the Agency commence an administrative proceeding within five years from the date the alleged violation occurred.[1] The Agency commenced proceeding against Tai on May 30, 1989.[2] The affirmative defense of the statute of limitations, asserted by Tai and conceded to by the Agency, bars Charges 2, 3, and 4, and accordingly those charges were abandoned by the Agency (Agency Motion p.3). However, the affirmative defense of the statute of limitations does not bar Charges 1 and 5.

On January 3, 1990, this Office issued an Order to Show Cause to Respondents why they should not be found in default for failure to make timely filings concerning discovery. No timely response was received and this office issued an Order on January 24, 1990 ruling Respondents in default and directing Agency Counsel to file an evidentiary submission by February 23, 1990, pursuant to § 788.8 of the Regulations, which provides:

Default (a) General

If a timely answer is not filed, the department shall file with the Administrative Law Judge a proposed Order together with the supporting evidence for the allegations in the charging letter. The Administrative Law Judge may require further submissions and shall issue any Order he deems justified by the evidence of record, any Order so issued shall have the same force and effect as an Order issued following disposition of contested charges.

Agency Counsel filed the Motion for Default Order on February 23, 1990. The Agency also submitted documentary evidence to support allegations made in the charging letters. A copy of the above mentioned Motion for Default Judgment was also sent to the Respondents on February 23, 1990, to which there has been no response.

The violations of the Act committed by Tai and his coconspirators which form the basis for the Agency's Charging Letter are directly related to other offenses committed by Hua Ko Electronics, (54 FR 50519 (1989) and Chipex, Inc. (See *In the Matter of Chipex, Inc., et al.*, 53 FR 28352 (1988), and involved the transfer of U.S.-origin commodities and technical data relating to the production, manufacture, and construction of semiconductor devices.

Hua Ko was a Hong Kong business venture involving a Hong Kong manufacturer of electronic watches and a Hong Kong-based company controlled and financed by the People's Republic of China. *Id.* at 29354. Hua Ko was found to have used its U.S. subsidiary, Chipex, to unlawfully export commodities and technical data from the U.S. to Hong Kong. *Id.* at 29357. Accordingly, Chipex and Hua Ko were denied export privileges.

As a result of the investigation of Hua Ko and Chipex with regard to those offenses, and because Chipex terminated operations in August 1982 (Chipex proceeding, 53 FR at 29358), Hua Ko needed to develop alternative sources for commodities and technical data it desired for the design and production of semiconductor devices. U.S. companies would not be able to obtain export licenses from the agency if they disclosed that Hua Ko was the ultimate consignees. Therefore, the parties formed a conspiracy to have Tai funnel the items desired by Hua Ko through Micro Mass and to obtain the needed export licenses by listing Micro Mass as the ultimate end user.

Discussion

The Agency's evidence established that on November 5, 1985, the United States Grand Jury for the Northern District of California handed down an indictment against Tai in *United States* v. *Philip Teik Jan Tai, doing business as American Semiconductor, Inc., et al. Cr. 85–2159 RPA*. Tai plead guilty to one count of that Indictment.

In a pleading submitted to this Tribunal dated September 18, 1989, Tai stated, regarding that criminal proceeding against him:

> With respect to the [guilty] plea, it is clear from the face of the abstract that *the [R]espondent [Tai] plead guilty to the same charges with which he is now being charged with by the Department.* As part of his sentence, he was ordered to pay $50,000 as a fine, payable in installments. He was also ordered to perform 200 hours of community service (Emphasis added).

Tai, having plead guilty, and having admitted that the charges in the Charging Letter are "the same," now is collaterally estopped from denying in this administrative proceeding the truth of the facts alleged in Charges 1 and 5 of the Charging Letter. As noted in the administrative proceeding, *In the Matter of Spawr Optical Research, Inc.*, 51 FR 7477 (1986), and subsequent federal court decision, *Spawr Optical Research* v. *Baldridge*, 689 F. Supp. 1366 (1986), the determination of a Court of competent jurisdication is not subject to redetermination before this administrative Tribunal. Accordingly, a conviction resulting from a guilty plea can be the basis in a subsequent administrative proceeding for applying the doctrine of collateral estoppel in a case such as this, where the United States and Tai are the same parties and

[1] *See United States* v. *Meyer*, 808 F.2d 912 (1st Cir. 1987); *United States* v. *Core Laboratories*, 759 F.2d 480 (5th Cir. 1985). *See also In the Matter of Data Systems Engineering, Inc.*, 54 FR 3506 (1989); *In the Matter of Martin Coyle individually and doing business as Datagon, GmbH*, 53 FR 52753 (1988) (administrative proceedings).

[2] The Charging Letter alleged that Charge 2 occurred on or about April 14, 1984; Charge 3 occurred on or about April 26, 1984; Charge 4 occurred on or about May 26, 1984.

the same issues are presented for resolution.

The doctrine of collateral estoppel and Tai's admission that the charges are "the same" conclusively establish, for the purposes of this proceeding, all the elements the Agency needs to prove to establish that he violated § 787.3(b) of the Regulations, as charged in Charge 1 of the Charging Letter and Section 787.3(a) as charged in Charge 5 of the Charging Letter.

Tai contends in his answer that he did not commit the violations alleged in the Charging Letter. Tai has not submitted any evidence to support his position.

Conclusion

These facts, on which the allegations of Charge 1 and Charge 5 of the Charging Letter are based, coupled with Tai's admissions in the related criminal proceeding, support a finding that Tai conspired with a denied party to violate the Act and the Regulations by exporting U.S.-origin equipment from the United States to Hong Kong without the validated export license required by § 772.1 of the Regulations. The commodities illegally exported by Respondent are controlled for reasons of national security. I find that the recommended denial for 15 years is appropriate for the two serious violations involved and is consistent with the actions taken in the above cited related cases.

Order

I. For a period of 15 years from the date of the final Agency action, Respondent

Philip Teik Jan Tai individually and doing business as
American Semiconductor, Inc.
762 Bicknell Road,
Los Gatos, California 95030

and all successors, assignees, officers, partners, representatives, agents and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position or responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.CA. app. 2412(c)(1)).

Dated: March 23, 1990.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 90-9989 Filed 4-30-90; 8:45 am]

BILLING CODE 3510-DT-M

National Technical Information Service

Withdrawal of Intention To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, hereby withdraws its notice, announced in the **Federal Register**, Vol. 55, No. 35, p. 6037 (February 21, 1990), of its intention to grant Hoffman-La Roche of Nutley, N.J., an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent No. 4,837,311 (S.N. 7-064,631), entitled "Anti-Retroviral Compounds."

The invention comprises compounds of a structure A-B-C wherein A and C are each independently 2', 3'-dideoxynucleosides and B is a linking group, including all novel intermediate compounds used in the synthesis of the compounds. The novel compounds exhibit antiretroviral activity but do not exhibit extreme toxic effects on the normal processes of mammalian host cells. The invention also comprises a method of preventing a retroviral infection or treating a subject infected with a retrovirus.

A copy of the instant patent may be purchased from the Patent and Trademark Office by writing to the

Commissioner of Patents and Trademarks, P.O. Box No. 9, Washington, DC 20231 (ph: 703/557-3428).

NTIS solicits applications from parties interested in receiving non-exlcusive licenses under the subject patent. License application forms and other information may be obtained from NTIS, Center for the Utilization of Federal Technology, Box 1423, Springfield, VA 22151, ATT: Neil L. Mark (Ph: 703/487-4738). Trademarks, P.O. Box No. 9, Washington, DC 20231 (Ph: 703/557-3428).

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 90-10073 Filed 4-30-90; 8:45 am]

BILLING CODE 3510-04-M

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

Meeting and Hearing

AGENCY: Commission on Minority Business Development.

ACTION: Notice of meeting and public hearing.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting and public hearing of the Commission on Minority Business Development will be held on Thursday, May 17, 1990 and Friday, May 18, 1990 respectively.

The May 17 meeting will convene at 9 a.m. in Teleconference room 2000 of the Bill J. Priest Institute of Economic Development, 1402 Corinth, Dallas, Texas.

The meeting agenda will include review of the minutes of the Commission's April 26 meeting, consideration of old business and consideration of new business. The meeting is open to the public.

The May 18 public hearing will begin at 9 a.m. in Teleconference room 2000 of the Bill J. Priest Institute of Economic Development 1402 Corinth, Dallas, Texas.

The public hearing is for purposes of receiving testimony from public and private sector decision-makers and entrepreneurs, professional experts, corporate leaders and representatives of key interest groups and organizations concerned about minority business development and participation in federal programs and contracting opportunities.

The Commission was established by Public Law 100-656, for purposes reviewing and assessing federal programs intended to promote minority business and making recommendations to the President and the Congress for such changes in law or regulation as may be necessary to further the growth and development of minority businesses.

FOR FURTHER INFORMATION CONTACT: Susan Gonzales or Anita Irick (202) 523-0030, Commission on Minority Business Development, 730 Jackson Place, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Minutes of the meeting and hearing transcripts will be available for public inspection and reproduction during regular working hours at 730 Jackson Place, NW., Washington, DC 20006 approximately 30 days following the meeting and hearing.

Dated: April 24, 1990.

Joshua I. Smith,

Chairman.

[FR Doc. 90-9995 Filed 4-30-90; 8:45 am]

BILLING CODE 6820-PB-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Foreign Operations; Determination

Pursuant to the reporting requirements of section 573 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990, and section 517 of the Foreign Assistance Act of 1961 (FAA) the Department of Defense is providing a notice on the transfer of excess tactical wheeled vehicles to Ecuador, Mexico, Peru, Jamaica, and Columbia.

This action is required to ensure that certain Latin American and Caribbean countries determined by the Secretary of State to be eligible under the International Narcotics Control Act (INCA) are afforded the opportunity of rapidly obtaining tactical wheeled vehicles at no cost for the vehicles themselves. These vehicles will support the active participation of the military forces of these countries in counternarcotics operations. This materiel is needed to enable the military forces in these countries to participate with local law enforcement agencies in a comprehensive national antinarcotics enforcement program, by conducting activities within that country and on the high seas to prevent the production, processing, trafficking, transportation, and consumption of illicit drugs or other controlled substances.

In accordance with section 517(c) FAA each of the recipient countries will agree in the associated Letter of Offer and Acceptance that it will ensure that these vehicles will be used only in support of antinarcotics activities.

The Acting Director, Defense Security Assistance Agency, Glenn A. Rudd, hereby certifies that the tactical wheeled vehicles are needed by Ecuador, Mexico, Peru, Jamaica, and Columbia, and determines that there will be no adverse impact on U.S. military readiness as a result of these transfers. The specific reporting requirements for these transfers are attached.

Dated: April 16, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

TACTICAL WHEELED VEHICLE SUMMARY FOR INCA

Item	Country	Qty	Unit acq price (dollars)	Extended acq val (dollars)	Unit sales price (dollars)	Ext unit sales val (dollars)
M151A2	Ecuador	120	16,214	1,945,680	818	98,160
	Mexico	500	16,214	8,107,000	818	409,000
	Peru	20	16,214	324,280	818	16,360
	Jamaica	50	16,214	810,700	818	40,900
	Colombia	50	16,214	810,700	818	40,900
M718	Mexico	11	20,054	220,594	1,010	11,100
	Colombia	10	5,025	50,250	1,010	10,100
	Ecuador	20	5,025	100,500	1,010	20,200
	Jamaica	4	5,025	20,100	1,010	4,040
	Peru	12	5,025	60,300	1,010	12,120
M880	Mexico	10	7,995	79,950	400	4,000
	Colombia	30	7,995	239,850	400	12,000

TACTICAL WHEELED VEHICLE SUMMARY FOR INCA—Continued

Item	Country	Qty	Unit acq price (dollars)	Extended acq val (dollars)	Unit sales price (dollars)	Ext unit sales val (dollars)
	Ecuador	100	7,995	799,500	400	40,000
	Jamaica	10	7,995	79,950	400	4,000
M881	Ecuador	4	7,548	30,192	377	1,508
M882	Mexico	30	8,562	256,860	428	12,840
	Ecuador	30	8,562	256,860	428	12,840
M883	Ecuador	20	11,030	220,600	552	11,040
M884	Mexico	20	11,030	220,600	552	11,040
	Ecuador	20	11,030	220,600	552	11,040
M885	Mexico	20	7,305	146,100	365	7,300
	Ecuador	20	7,305	146,100	365	7,300
M886	Mexico	50	13,737	686,850	687	34,350
	Ecuador	40	13,737	549,480	687	427,480
	Jamaica	4	13,737	54,948	687	2,748
M890	Mexico	50	4,323	216,150	216	10,800
	Ecuador	60	4,323	259,380	216	12,960
M892	Ecuador	3	8,103	24,309	405	1,215
M893	Jamaica	4	12,533	50,132	627	2,508
M792	Mexico	12	13,924	50,132	785	9,420
M416	Ecuador	20	3,067	61,340	801	16,020
	Jamaica	12	3,067	36,804	801	9,612
	Mexico	50	3,067	153,350	801	40,050
	Peru	24	3,067	73,608	801	19,224
M520	Mexico	20	57,186	1,143,720	3,316	66,320
M559	Ecuador	20	66,358	1,327,160	3,817	76,340
	Mexico	20	66,358	1,327,160	3,817	76,340
Total		1,350		$21,161,789		$1,603,175

[FR Doc. 89-9953 Filed 4-30-89; 8:45 am]
BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Draft Environmental Impact Statement; St. Charles Parish, LA

AGENCY: U.S. Army Corps of Engineers, DOD, New Orleans District.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, New Orleans District, is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS) will be prepared for the proposed Louisiana Coastal Area, Hurricane Protection Study, Westbank, St. Charles Parish. Of eight specific sites evaluated in the Reconnaissance phase, only the Willowdale subdivision area, was determined to be in the Federal interest. This study is to determine the nature and extent of projected increases in hurricane-induced flooding as a result of coastal losses in this area of Louisiana. This study will also ascertain the feasibility of improvements or modifications to existing area improvements in the interest of hurricane protection.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Vigh, U.S. Army Corps of Engineers, Environmental Section (CELMN-PD-RE), P.O. Box 60267, New Orleans, Louisiana 70160-0267. Telephone: (504) 862-2540.

SUPPLEMENTARY INFORMATION: This study was authorized by a resolution adopted by the Senate Committee on Public Works on April 19, 1967, and the House Committee on Public Works on October 19, 1967. A Reconnaissance Report in 1988 was conducted to determine the extent of hurricane-induced flooding in the coastal area, as well as to identify feasible measures to reduce flooding.

Louisiana's coastal wetlands and barrier islands act as buffers for coastal communities, absorbing much of the energy associated with the winds and wave action induced by hurricanes. Recent studies indicate that Louisiana's shoreline is receding as a result of subsidence, sea level rise, and the erosive forces of man and nature. The rates of loss vary for different areas along the coast, but they have been estimated at 35 square miles per year for the entire coastline. As the coastline retreats shoreward, the effects of hurricane-induced flooding is projected to worsen, and some communities which today suffer no significant threat from this type of flooding are expected to experience increasing flood damage. Those communities already threatened by hurricane-induced flooding, such as the Willowdale area, are projected to become increasingly prone to this type of flooding.

In this study, only traditional means of flood protection, such as levees, floodwalls, and evacuation, will be evaluated. The only benefits that will be quantified are those associated with reduction in flood damages. The damages will be determined by stage/frequency information for the present and future conditions.

The public involvement program will include a scoping letter and several public meetings to obtain information regarding alternatives under consideration and significant resources to be evaluated in the DEIS. Participation of affected Federal, State, and local agencies, and other private organizations and individuals will be invited.

Significant issues to be analyzed in the DEIS include impacts of the proposed project on biological, cultural, historical, social, economic factors, water quality, human resources, and project costs.

The U.S. Fish and Wildlife Service will provide Planning Aid information and a Coordination Act Report for the DEIS.

The DEIS will be coordinated with all required Federal, State, and local agencies, as well as with environmental groups, landowner groups, and interested individuals. All review comments received will be considered, and responses to these comments will be presented in the final EIS.

A scoping meeting is scheduled to be held in May 1990. The draft EIS is scheduled to be available to the public in October 1992.

Dated: April 13, 1990.

Richard V. Gorski,

Colonel, U.S. Army, District Engineer.

[FR Doc. 90-9997 Filed 4-30-90; 8:45 am]

BILLING CODE 3710-84-M

Office of the Inspector General

Privacy Act of 1974; New System of Records

AGENCY: Inspector General, DOD.

ACTION: Notice of a proposed new record system subject to the Privacy Act.

SUMMARY: The Office of the Inspector General proposes to add a new record system to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: This proposed action will be effective without further notice on May 31, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to the David C. Stewart, Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202-2884. Telephone (202) 697-6035 or Autovon 227-6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the **Federal Register** to this date as follows:

50 FR 22279, May 29, 1985 (DoD Compilation, changes follow) 52 FR 26547, Jul 15, 1987, 52 FR 35754, Sep 23, 1987, 54 FR 24377, Jun 7, 1989, 54 FR 33956, Aug 17, 1989.

A new system report, as required by 5 U.S.C. 552(r) of the Privacy Act, was submitted on April 20, 1990, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 25, 1990

CIG-12

SYSTEM NAME:

DoD Inspector General Drug Free Workplace Records

SYSTEM LOCATION:

DoD Inspector General, Office of the Assistant Inspector General for Administration and Information Management, Personnel and Security Directorate, 400 Army Navy Drive, Room 434, Arlington, VA 22202-2884, and offices of designated contractors.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Employees of, and applicants for positions in, the Office of the DoD Inspector General.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7301 and 7361; 21 U.S.C. 812; Pub. L. 100-71; Executive Orders 12564 and 9397; and DoD Directive 1010.9, "DoD Civilian Employee Drug Abuse Testing Program".

PURPOSES:

The system is established to maintain records relating to the implementation of the program, administration, selection, notification and testing (of DoD Inspector General employees, and applicants for employment, for the use of illegal drugs and drugs identified in Schedule I and II of 21 U.S.C. 812. Records relating to the illegal possession or distribution of controlled substances, (as specified in schedules I through V, as defined in 21 U.S.C. 802(6) and listed in part B, subchapter 13 of that title) by the employees of the Inspector General will also be maintained in this system of records. Records will consist of, but not be limited to, interservice/agency support agreements/designated contractors for specimen collection, laboratory testing and medical review services; training requirements; urine specimens, reports of drug test results; policy guidance; self-identification records; requests for testing submitted by employees or supervisors; testing notification; documentary evidence in support of testing decision; chain of custody records regarding testing samples; records relating to the type and quality of testing performed; documentary evidence submitted by employee or applicant in rebuttal of test results; reports of medical findings regarding test results; disciplinary/adverse action records to include notification of proposed action and documentary evidence submitted in support thereof and management's action; referrals to counseling/rehabilitation services; records regarding employee's consent for release of information concerning counseling/rehabilitation progress; and records relating to the illegal possession or distribution of controlled substances by the employees of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In order to comply with the provisions of 5 U.S.C. 7301, the DoD Inspector General " Blanket Routine Uses" do not apply to this sytem of records.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

POLICIES, AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders. Electronic records exist on magnetic tape, diskette, or other machine-readable media. Records are also maintained in an automated data system and electronically secured files.

RETRIEVABILITY:

Records are retrieved by employee or applicant name, Social Security Number, date of birth, specimen identification number, locally assigned identifying number, agency name, collection site or date of testing. A specified data element or a combination thereof contained in this system of records can be used for accessing information.

SAFEGUARDS:

Paper records are stored in secure containers (e.g. safes, locked filing cabinets, *etc.*) that are locked when not being used. Electronic records are accessed on computer terminals in supervised areas using a system with password access safeguards and is protected/restricted through the use of assigned user identification/passwords for entry into system modules. All employee and applicant records are maintained and used with the highest regard for employee and applicant privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the systems.

Urine speciments will be stored in appropriately locked storage facilities. Access to such records and specimens is restricted.

Chain of custody and other procedural and documentary requirements of Public Law 100-71 and the Department of Health and Human Services Guidelines will be followed in collection of urine samples, conducting drug tests and processing test results.

RETENTION AND DISPOSAL:

Records are retained for up to three years for any employee who has separated, retired or died; or for up to five years after any and all final appeals have been adjudicated.

Destruction of records is accomplished by tearing, shredding, or burning of paper records. Electronic records are erased or overwritten.

SYSTEM MANAGER(S) AND ADDRESS:

OIG Drug Program Coordinator, Office of the Inspector General, Assistant Inspector General for Administration and Information Management, Personnel and Security Directorate, 400 Army Navy Drive, Room 434, Arlington, VA 22202–2884.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Assistant Director FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Room 434, Arlington, VA 22202–2884.

Individuals must furnish their full name, Social Security Number, the title, series and grade of the position they occupied or applied for when the drug test was conducted and the month and year of the test. Written requests should include the notarized signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Assistant Director, FOIA/PA Division, Office of the Assistant Inspector General for Investigations, 400 Army Navy Drive, Room 434, Arlington, VA 22202–2884.

CONTESTING RECORD PROCEDURE:

Agency rules for access to records and for contesting contents and appealing initial agency determination by the individual concerned are contained in OSD Administrative Instruction No. 81; 32 CFR part 286b; IG DoD Policies and Procedures Manual, Chapter 33 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data maintained in this system is obtained from the individual to whom the record pertains; DoD Inspector General and contractor employees involved in the selection, notification and collection of individuals to be tested; contractor laboratories that test urine specimens for the presence of illegal drugs; contractor medical review officials; supervisors and managers and other officials engaged in administering the Drug-Free Workplace Program and processing adverse actions based on drug test results and others on a case by case basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 90–10051 Filed 4–30–90; 8:45 am]

BILLING CODE 3810–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 90–2]

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards; Extension of Time to Secretary of Energy To Respond

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; extension of time.

SUMMARY: The Defense Nuclear Facilities Safety Board has granted the Secretary of Energy's request for a 45-day extension beyond the prescribed date for responding to the Board's Recommendation 90–2, dated March 8, 1990 (55 FR 9487).

DATES: The Secretary of Energy may respond on or before June 12, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, Defense Nuclear Facilities Safety Board, 600 E Street NW., Suite 675, Washington, DC 20004; or telephone 202/376–5083, (FTS) 376–5083.

Dated: April 26, 1990.

Kenneth M. Pusateri,

Acting Executive Director.

April 25, 1990

Honorable James D. Watkins, Secretary of Energy, Washington, DC 20585.

Dear Admiral Watkins:

This is in response to your letter of April 18 formally requesting a 45-day extension beyond the prescribed date for responding to the Board's recommendations dated March 8, 1990, pertaining to the Department of Energy Standards.

Please be advised that the Defense Nuclear Facilities Safety Board, per your request, does grant a 45-day extension for the reasons cited in your letter of April 18, viz.: that the Department of Energy is unable at this time to provide a comprehensive response partly for the reasons cited by the Board in its March 8 letter (the apparent lack of specificity, uniformity, and varied applicability of the DOE Orders), and partly because of the amount and nature of the information needed to comply with the Board's recommendations.

Sincerely yours,

John T. Conway,

Chairman.

[FR Doc. 90–10048 Filed 4–30–90; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

Education Statistics National Center; Meeting

AGENCY: National Center for Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: The National Center for Education Statistics (NCES) will hold a public meeting to discuss changes to the next cycle of the National Survey of Postsecondary Faculty (NSOPF) to be conducted in 1991–92.

DATE AND TIME: May 21, 1990, 9:30 a.m.—3:30 p.m.

ADDRESSES: 9th floor conference room, 555 New Jersey Avenue NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Linda Zimbler, NSOPF Project Officer, 555 New Jersey Avenue, room 324, Washington, DC 20208–5652, telephone: (202) 357–6834.

SUPPLEMENTARY INFORMATION: NCES has produced a position paper outlining the major components of the 1992 NSOPF and the proposed changes from the 1988 NSOPF. Anyone interested may request a copy of the 1992 NSOPF position paper by writing or calling Linda Zimbler. The public is invited to make suggestions about the next cycle of the NSOPF at the meeting on May 21 or to submit written comments before, during, or after the meeting, but no later than July 1, 1990.

Dated: April 26, 1990.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–10049 Filed 4–30–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Remedial Action at the Uranium Mill Tailings Site Located at Grand Junction, CO

AGENCY: Department of Energy.

ACTION: Notice of floodplain statement of findings.

SUMMARY: This Floodplain Statement of Findings is prepared pursuant to Executive Orders 11988 and 11990, and

10 CFR part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements. The Department of Energy (DOE) proposes to construct a haul road parallel to U.S. Highway 50 (US 50) between Whitewater, Colorado, and a uranium mill tailings disposal site near Cheney Reservoir. Haul road construction would temporarily affect the 100-year floodplains of Kannah Creek and Indian Creek. The duration of haul road construction would be approximately three to six months.

Under authority granted by the Uranium Mill Tailings Radiation Control Act of 1978, the DOE plans to clean up residual radioactive mill tailings and other contaminated materials at the former Climax Uranium Company uranium mill site, Grand Junction, Colorado. The DOE is required by Congress to complete remedial action in Grand Junction by September 1994.

Background

The Final Environmental Impact Statement (FEIS) (DOE/EIS–126–F) for the remedial action evaluated the impacts of cleaning up the uranium mill tailings at the Grand Junction mill site and the Cheney disposal site. In addition, a Floodplain/Wetlands Assessment and Floodplain Statement of Findings, related to impacts in the 100-year foodplain of the Colorado River at the Grand Junction mill site, were included in the (FEIS). However, the FEIS and subsequent Record of Decision did not consider an alternative to construct a temporary haul road between Whitewater and the Cheney disposal site.

The environmental impacts of haul road construction were evaluated in an environmental analysis, and a Floodplain/Wetlands Assessment was prepared by the DOE's Uranium Mill Tailings Remedial Action Project Office. Those documents indicated that haul road construction would occur in the 100-year floodplains of Kannah and Indian Creeks (Figure 1).

Project Description

Kannah Creek is a perennial stream that originates in the Grand Mesa northwest of the Cheney disposal site. The creek is usually dry in the vicinity of U.S. 50 because the majority of the normal flow is diverted from the main channel for irrigation purposes by a network of ditches. Indian Creek is an ephemeral stream that also originates in the Grand Mesa. In the vicinity of US 50, the Indian Creek channel is narrow and dry, the bed slopes at a very gradual grade, and the surface flows are rarely encountered.

The proposed haul road would connect a rail/truck transfer station near Whitewater, Colorado, and an access road to the Cheney disposal site. Uranium mill tailings would be transported by rail from the Grand Junction mill site to the Whitewater transfer station, where they would be loaded onto trucks and transported via the proposed haul road to the Cheney access road. The proposed haul road would be approximately 6.4 miles long, and would be located primarily within an existing Colorado Department of Highways right-of-way (ROW) that varies in width from approximately 100 feet to 175 feet; and area approximately 75-feet wide would be disturbed during construction. A minimum of 36 feet would separate the haul road and US 50.

The proposed haul road would be two lanes (approximately 30-feet wide. A 60-foot, single-span bridge would be constructed in the 100-year floodplain of Kannah Creek at the crossing, and a culvert would be placed in the 100-year floodplain of Indian Creek at the crossing. According to the State and local requirement, construction of the bridge across Kannah Creek will require a floodplain permit from Mesa County, and the Colorado Department of Highways has requested that the Indian Creek culvert be able to pass the same amount of water as the culvert under US 50.

Construction of the temporary haul road would not significantly impact the 100-year floodplain of either Kannah Creek or Indian Creek. Although construction activities will occur within the floodplains, flows will not be rerouted; therefore, construction of a temporary crossing will not alter the existing floodplain. On completion of the tailings haul phase of the construction project, the parallel haul road, including the bridge across Kannah Creek and the culvert in Indian Creek, would be removed. The disturbed areas within the floodplain will be backfilled with topsoil removed during construction, recontoured to approximate the pre-construction topography, and reseeded.

Two other alternatives were considered, but not selected. The first alternative was to move the route of the parallel haul road to avoid disturbing the 12 acres of wetlands and the 100-year floodplain. However, construction of a dedicated temporary haul road other than parallel to US–50 would not avoid the impacts to the floodplains of Kannah and Indian Creeks because these two creeks run perpendicular to the proposed road and could not be avoided. In addition, realigning the parallel haul road to avoid the wetlands would require moving the road to the ROW on the east side of US–50 or moving the road outside the ROW. Moving the parallel haul road to the ROW on the east side of US 50 would not be feasible because the ROW on that side of the road is not wide enough to construct the parallel haul road, and the wetlands on the east side of US 50 would be disturbed. Moving the haul road outside the ROW, west of US 50, would impact grazing—the major land use in the area. In addition, the realigned road would impact much more private property than the presently proposed routing. Impacts of realignment would not be less than those impacts of the proposed route because the wetlands provide only marginal habitat for wildlife. Furthermore, 9 of the 12 acres of the wetlands to be cleared are dependent on irrigation activities that are subject to changing land use patterns that could cause the wetlands to disappear. All cleared wetlands would be replaced. Replacement wetlands are expected to provide a wildlife habitat superior to the wetlands that had been cleared.

The second alternative not selected was the no action alternative. The no action alternative is not practicable because a Conditional Use Permit issued by Mesa County restricts the use of haul trucks on US 50, and other local roadways would not sufficiently support the anticipated volume of haul truck traffic. Also, the restrictions of the Conditional Use Permit do not allow a feasible alternative to the parallel haul road.

FINDINGS

Potential impacts during construction and use of the haul road would be mitigated by the following measures:

- The bridge decking over Kannah Creek would be designed to withstand severe floods, thereby reducing the potential to become dislodged and dam water during such an event.
- The potential for the erosion of Kannah Creek and Indian Creek would be reduced by the use of protective measures, such as Gabion walls, riprap, mulch, or sheet piles.
- The potential for flooding at the Indian Creek crossing between the haul road and US 50 would be reduced by using culverts with flow capacities as great as the culverts below US 50.
- The bridge and culverts would be removed after remedial action and all disturbed areas would be recontoured and revegetated.

Haul road construction has been designed to conform to applicable Federal and State regulations. Before

construction begins, all applicable permits and approvals, such as those required under Section 404 of the Clean Water Act, would be obtained from the U.S. Army Corps of Engineers, Colorado State agencies, and other agencies having jurisdiction. Initial consultation with the agencies has taken place.

Based on the above, it was determined that the impacts to the floodplains would be insignificant.

SINGLE COPIES OF THE FLOODPLAIN/WETLAND ASSESSMENT ARE AVAILABLE FROM: Mark Matthews, Acting UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue, NE., Suite 1720, Albuquerque, NM 87108, (505) 844–3941.

FOR FURTHER INFORMATION CONTACT: Carol M. Borgstrom, Director, Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, Room 3E–080, Forrestal Building, Washington, DC 20585, (202) 586–4600.

Issued at Washington, DC, April 16, 1990.

Peter N. Brush,

Acting Assistant Secretary Environment, Safety and Health.

BILLING CODE 6450–01–M

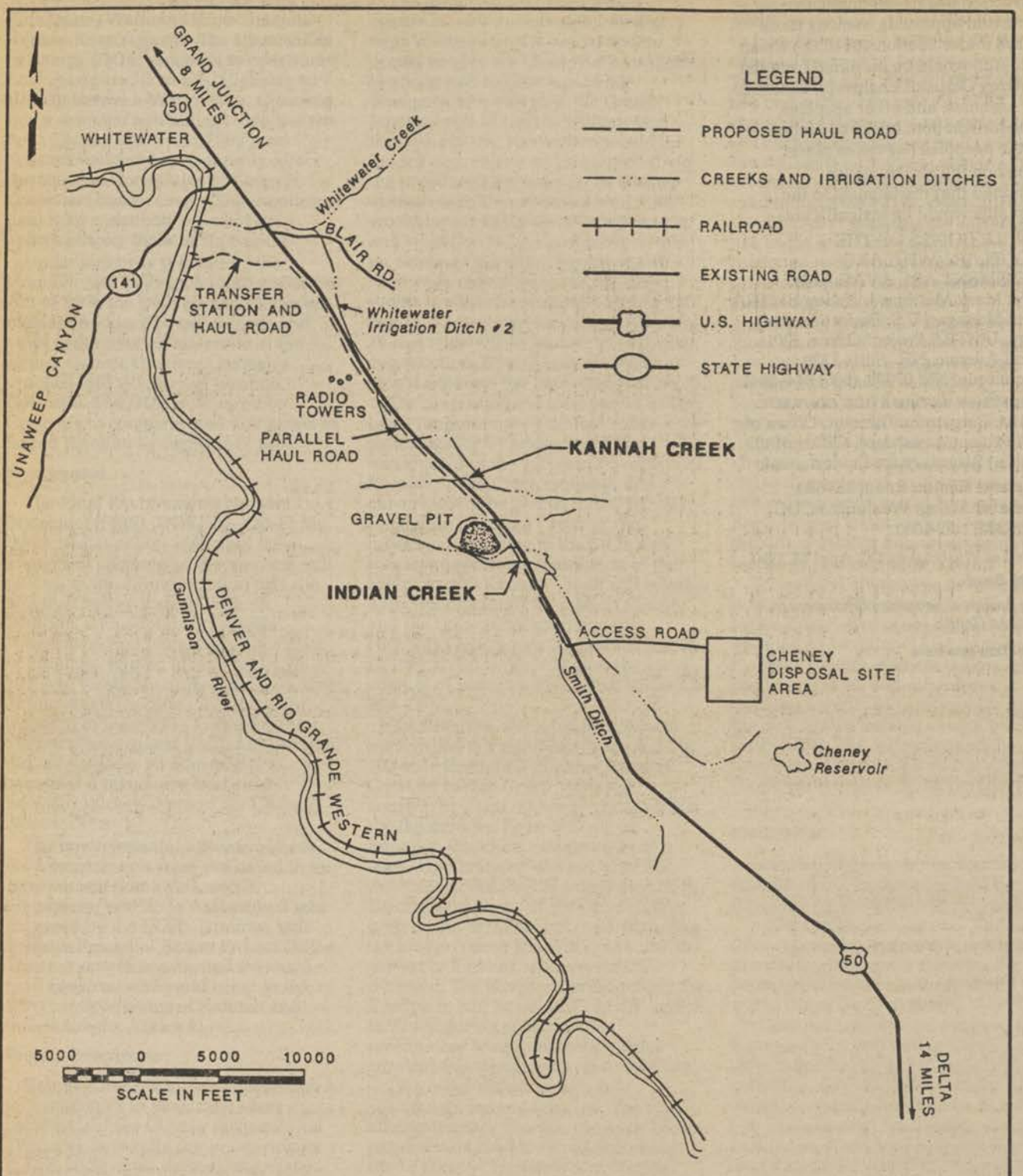

FIGURE 1
LOCATION OF KANNAH CREEK AND INDIAN CREEK ALONG THE PROPOSED PARALLEL HAUL ROAD

[FR Doc. 90-9483 Filed 4-30-90; 8:45 am]
BILLING CODE 6450-01-C

Assistant Secretary for International Affairs and Energy Emergencies;

Proposed Subsequent Arrangement; ERATOM/France

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160, notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

S–EU–977, for the sale of 1.001 grams of uranium enriched to 93.276 percent in the isotope uranium-235, and 1.001 grams of uranium enriched to 49.383 percent in the isotope uranium-235 to France for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take affect no sooner than May 16, 1990.

Issued in Washington, DC, on April 25, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90–10104 Filed 4–30–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP90–1225–000, et al.]

ANR Pipeline Co., et al.; Natural Gas Certificate Filings

April 24, 1990.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Co.

[Docket No. CP90–1225–000]

Take notice that on April 19, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP90–1225–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Centran Corporation (Centran), under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport, on an interruptible basis, up to 40,000 dt. equivalent of natural gas per day for Centran. ANR states that construction of facilities would not be required to provide the proposed service.

ANR further states that the maximum day, average day, and annual transportation volumes would be approximately 40,000 dt. equivalent, 40,000 dt. equivalent and 14,600,000 dt equivalent respectively.

ANR advises that service under § 284.223(a) commenced February 28, 1990, as reported in Docket No. ST90–2378.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. East Tennessee Natural Gas Co.

[Docket No. CP90–1111–000]

Take notice that on April 3, 1990, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939–0245, filed in Docket No. CP90–1111–000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity, as supplemented on April 19, 1990, authorizing the construction and operation of facilities to permit the rearrangement of the maximum daily quantities of some of its customers, to increase the contract demands of some of its customers, to increase authorized interruptible sales volumes to some of its customers, and to expand pipeline capacity, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, East Tennessee proposes to (a) rearrange the maximum daily quantities of some of its customers as detailed in the application, as supplemented, (b) increase the contract demands of certain of its customers by a total of 40,048 Mcf per day, and (c) increase the authorized interruptible sales service for some of its customers by a total of 21,755 Mcf per day. A summary of the changes proposed in (b) and (c) above is reflected in an appendix.[1]

To effectuate the above changes in sales service, East Tennessee proposes to construct and operate approximately 29.92 miles of pipeline loop, to restage some proposed existing compressors, and to add 8,160 horsepower of compression at some existing compressor stations, all at an estimated cost of $27, 171,000, to be financed from funds on hand or from sources outside East Tennessee.

Comment date: May 15, 1990, in accordance with Standard Paragraph F at the end of this notice.

3. Green Canyon Pipe Line Co.

[Docket Nos. CP90–1201–000, CP90–1202–000, and CP90–1203–000]

Take notice that on April 17, 1990, Green Canyon Pipe Line Company (Green Canyon), Post Office Box 1396, Houston, Texas 77251, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP89–515–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[2]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under § 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

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[1] The appendix can be picked up in the Office of Public Reference, as it will not be published in the **Federal Register**.

[2] These prior notice requests are not consolidated.

Docket No. (Date Filed)	Applicant	Shipper Name	Peak Day [1] Avg. Annual	Points of Receipt	Points of Delivery	Start Up Date Rate Schedule	Related [2] Dockets
CP90-1201-000 (4-17-90)	Green Canyon Pipe Line Company, P.O. Box 1396, Houston, TX 77251.	Tejas Power Corporation	100,000 50,000 36,500,000	Offshore LA	Offshore LA	3-23-90 IT-GC	CP89-515-000 ST90-2386-000
CP90-1201-000 (4-17-90)	Green Canyon Pipe Line Company, P.O. Box 1396, Houston, TX 77251.	Tenngasco Corporation	160,000 60,000 58,400,000	Offshore LA	Offshore LA	3-22-90 IT-GC	CP89-515-000 ST90-2387-000
CP90-1203-000 (4-17-90)	Green Canyon Pipe Line Company, P.O. Box 1396, Houston, TX 77251.	Transco Energy Marketing Company.	2,000 2,000 730,000	Offshore LA	Offshore LA	3-1-90 FT-GC	CP89-515-000 ST90-2204-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

4. Northern Natural Gas Co. Division of Enron Corp.

[Docket No. CP90-1215-000]

Take notice that on April 18, 1990, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-1215-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to reassign volumes of natural gas and to construct and operate two new delivery points to Northern States Power-Minnesota (NSP) under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to reassign 2,300 Mcf per day of CD-1 firm sales service from St. Paul, Minnesota to Madison Lake and St. Clair, Minnesota as set forth below:

Community	Volumes in mcf/d		Net Effect of Reassignment
	Present	Proposed	
St. Paul	20,264	17,964	(2,300)
Madison Lake	0	1,950	1,950
St. Clair	0	350	350
Total	20,264	20,264	0

Northern states that the natural gas would be used for residential purposes.

Northern also proposes to construct and operate two new delivery points in Blue Earth County, Minnesota to deliver the reassigned volumes of natural gas to NSP for service to Madison and St. Clair, Minnesota.

Northern states that the total volumes to be delivered to NSP after the request would not exceed the total volumes authorized prior to the request. Northern asserts that the proposed activity is not prohibited by its tariff and, even through the request is expected to result in increased peak day and annual deliveries, there would be no deteriment or disadvantages to Northern's other customers.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Natural Gas Pipeline Co. of America

[Docket No. CP90-1204-000]

Take notice that on April 18, 1990, Natural Gas Pipeline Company of America (Natural), 702 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP90-1204-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon certain facilities and the related direct sale delivery service for Zinc Corporation of America (Zinc), under Natural's blanket certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it connected a direct industrial sale to Zinc (formerly New Jersey Zinc Company) in 1933. Natural further states that a 4-inch lateral approximately four miles long, a sales measuring station and other appurtenant facilities were originally constructed from Naturals Amarillo mainline to the Zinc plant located in DuPue, Bureau County, Illinois. It is indicated that these facilities, and the related direct sale delivery service became jurisdictional under Natural's grandfather certificate in Docket No. G-235 pursuant to an order issued October 13, 1952. It is further indicated that Natural requests permission and approval to abandon the Zinc meter station and approximately 2.4 miles of the total 4 miles of the 4-inch lateral. Natural states that approximately 1.6 miles of the total 4 mile lateral will be required to remain in service in order to continue to provide sales for resale service to Illinois Power Company.

Natural states that the transportation/delivery of additional, and subsequently reduced, volumes of natural gas for Zinc was further authorized in Docket Nos. CP66-360, CP69-255, CP72-43 and CP74-96, with orders issued August 8, 1966, June 4, 1969, March 28, 1972 and January 16, 1974, respectively. It is further stated that at the present time, Natural is authorized to deliver up to 1,000 Mcf per day of natural gas to Zinc.

Natural states that it requests permission and approval to abandon the subject facilities and the related direct sale delivery service effective with the termination date of the current contract extension, December 31, 1989. Natural further states that such service is no longer required by Zinc as the plant which utilized the natural gas has ceased to operate.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. ANR Pipeline Co.

[Docket No. CP90-1223-000]

Take notice that on April 19, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP90-1223-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Northwestern Mutual Life Insurance Co. (Northwestern), Under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport, on an interruptible basis, up to 11,200 MMBtu

per day for Northwestern. ANR states that construction of facilities would not be required to provide the proposed service.

ANR further states that the maximum day, average day, and annual transportation volumes would be approximately 11,200 MMBtu, 11,200 MMBtu and 4,088,000 MMBtu respectively.

ANR advises that service under § 284.223(a) commenced March 1, 1990, as reported Docket No. ST90–2399.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

7. ANR Pipeline Co.

[Docket No. CP90–1222–000]

Take notice that on April 19, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP90–1222–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Coastal Gas Marketing (Coastal), under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport, on an interruptible basis, up to 605,500 dt. equivalent of natural gas per day for Coastal. ANR states that construction of facilities would not be required to provide the proposed service.

ANR further states that the maximum day, average day, and annual transportation volumes would be approximately 605,500 dt. equivalent, 605,500 dt. equivalent and 221.007,500 dt equivalent respectively.

ANR advises that service under § 284.223(a) commenced March 1, 1990, as reported Docket No. ST90–2375.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Co.

[Docket No. CP90–1224–000]

Take notice that on April 19, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center Detroit, Michigan 48243, filed in Docket No. CP90–1224–000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Entrade Corporation (Entrade), under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport, on an interruptible basis, up to 250,000 dt. equivalent of natural gas per day for Entrade. ANR states that construction of facilities would not be required to provide the proposed service.

ANR further states that the maximum day, average day, and annual transportation volumes would be approximately 250,000 dt. equivalent, 250,000 dt. equivalent and 91,250,000 dt equivalent respectively.

ANR advises that service under § 284.223(a) commenced February 27, 1990, as reported Docket No. ST90–2377.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

9. Southern Natural Gas Co.

[Docket No. CP90–1188–000]

Take notice that on April 11, 1990, Southern Natural Gas Company (Southern) filed in Docket No. CP90–1188–000 a request pursuant to the notice procedure in Section 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Blue Circle Inc. (Blue Circle), an end-user, under Southern's blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a service agreement dated January 17, 1990, Southern would perform the proposed transportation for Blue Circle under its Rates Schedule IT. Southern states that the service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. Southern, further States that the service agreement provides for a maximum transportation quantity of 5,500 MMBtu of gas on a peak day. Blue Circle anticipates having the full 5,500 MMBtu transported on an average day and based thereon, Southern expects to transport 2,007,500 MMBtu on an annual basis. Southern proposes to receive the gas at various existing receipt points in offshore Texas, offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delviery to Blue Circle's plant in Alabama. Southern advises that the service commenced on February 10, 1990, as reported in Docket No. ST90–2109–000, pursuant to § 284.223(a)(1) of the Commission's Regulations.

Comment date: June 8, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Tennessee Gas Pipeline Co.

[Docket No. CP90–1206–000]

Take notice that on April 18, 1990, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP90–1206–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Western Gas Marketing USA Ltd (WGM), a marketer of natural gas, under Tennessee's blanket certificate issued on Docket No. CP87–115–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes to transport, on an interruptible basis, up to 51,550 Dt. per day for WGM. Tennessee states that construction of facilities would not be required to provide the proposed service.

Tennessee further states that the maximum day, average day, and annual transportation volumes would be approximately 51,550 Dt., 51,550 Dt. and 18,815,750 Dt. respectively.

Tennessee advises that service under § 284.222(a) commenced March 20, 1990, as reported in Docket No. ST90–2536.

Comment date: June 8, 1990, in accordance with Standard paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sction 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and the Natural Gas Act and the

Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 175.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed filing a protest. If a protest is filed and and withdraw within 30 days after the time allowed or filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-9998 Filed 4-30-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-24-NG]

Kimball Energy Corp.; Application for Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 6, 1990, of an application filed by Kimball Energy Corporation (Kimball), requesting blanket authority to export up to 100,000 Mcf of domestic natural gas per day to Canada or an aggregate of 75 Bcf in export volumes over a two-year period beginning on the date of first export delivery.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., May 31, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, FE-53, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, room 6E-042, GC-32, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Kimball, a Texas corporation with its principal place of business in Arlington, Texas, is a marketer of natural gas in the United States. Kimball requests authority to export domestic supplies of natural gas to Canadian customers on an interruptible, best efforts basis. Kimball intends to export for its own account or on behalf of various U.S. producers, pipelines or Canadian purchasers for sale in the spot and short-term Canadian markets. Kimball states that blanket export sales would be negotiated individually and based on the availability of surplus domestic gas supplies as well as prevailing market conditions in Canada. Kimball intends to use existing facilities for the transportation of the gas. Kimball also would file reports with FE within 30 days after the end of each calendar quarter giving the details of the individual transactions.

This export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204-111 and 0204-127. In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. The applicant asserts that through this requested authority it intends to provide additional markets for current surplus supplies for U.S. natural gas that is not needed to meet U.S. demand as evidenced by the recent weakness in domestic gas prices. Parties opposing the arrangement bear the burden of overcoming this assertion. In the event this application is approved, FE, in order to provide the applicant maximum flexibility, may designate an aggregate rather than a daily volume export limit.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided,

such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Kimball's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 23, 1990.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–10105 Filed 4–30–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3761–2]

Technology Innovation and Economics Committee of the National Advisory Council for Environmental Technology Transfer (NACETT)

Under Pub. L. 92463 (The Federal Advisory Committee Act), EPA gives notice of a fact finding meeting of the Focus Group on Environmental Permitting of the Technology Innovation and Economics (TIE) Committee. The TIE Committee is a standing committee of the National Advisory Council for Environmental Technology Transfer (NACETT), an advisory committee to the administrator of the EPA. The TIE Committee and NACETT are seeking ways to enhance the effectiveness of the environment regulatory system in the U.S., and will recommend to the Administrator promising improvements that may be identified in NACETT fact finding and deliberative activities. The meeting will convene on May 16, 1990, from 8:30 a.m. to 4:30 p.m. at Bechtel Environment, Inc., 50 Beale Street, San Francisco, CA 94119–3965.

The Focus Group on Environmental Permitting is examining the relationship between the introduction of new technologies for environmental purposes and governmental permitting and compliance processes. The Focus Group is also examining the impact of regulatory "glitches"—regulatory requirements that have an unplanned, adverse effect on technology innovation and diffusion—on the development and introduction of new technologies for environmental purpose. The term "new technologies for environmental purposes" is defined to include the development, testing, and commercial application of all environmentally beneficial devices, whether for pollution prevention, pollution control, remediation, or environmental measurement.

The Focus Group members share the concern that environmental permitting and compliance systems, and associated regulatory processes, at the federal, state, and local levels create both incentives and disincentives for the process of technology innovation for environmental purposes. Issues being considered by the Focus Group include the following:

- Identifying the major interested parties and their motivation with respect to the decision to invest in developing or applying an innovative technology for pollution prevention or for environmental control or cleanup
- Understanding the resource and timing impacts on technology innovation and diffusion of permitting reviews by federal, state, and local authorities
- The importance to technology innovation and diffusion of flexibility in permitting requirements and of cross-media consideration of environmental impacts of innovative technology
- The importance to technology innovation and diffusion of flexibility in compliance practices
- Measuring the potential to create incentives for pollution prevention in permitting and compliance systems
- Gaining perspective on the concerns of the general public for technology innovation for environmental purposes.

The Focus Group invites individuals, firms, and other organizations who can shed light on these subjects and issues to provide statements at the public meeting on May 16. Appropriate statements should include at least the following information:

1. The name, relevant affiliation, address, and phone number for the potential respondent.

2. Comments about any positive and negative aspects of the permitting, compliance, or regulatory processes that the potential respondent believes affect technology innovation for environmental purposes.

3. Suggestions of improvements that could make environmental permitting, compliance, and regulatory processes more efficient with respect to technology innovation for environmental purposes, without diminishing the benefits of environmental protection for which these processes are intended.

4. Illustration of the significance of these comments and suggestions using specific, real case studies, based on the direct experience of the potential respondent, that of their organization, or that of their clients or other associates.

Members of the public wishing to make comments at the San Francisco meeting are invited to identify themselves in writing to David R. Berg, Director of the Technology Innovation and Economics Committee, no later than May 11, 1990. An outline of the points to be made must be provided by that date, and a complete text is preferred. Please send comments to David R. Berg (A–101 F6), EPA, Room 115, 499 South Capitol Street, SW., Washington, DC 20460. The Focus Group is planning a second fact finding meeting, to be held in Washington, DC, in the summer of 1990. Respondents not able to provide comments at the San Francisco may provide them at the second meeting or by sending a written statement or a videotape to the TIE Committee staff at the address below.

The May 16 meeting (and any future fact finding meeting in Washington, DC) will be open to the public. Potential respondents are assured that their written comments will be received and reviewed by the Focus Group. It is hoped that time will be found for all respondents present at the meeting. First priority for making oral presentations will be given to those with comments that are most responsive to the four criteria listed above, as evaluated by the Focus Group and the TIE Committee staff. Additional information may be obtained from David R. Berg or Morris Altschuler at the above address, by calling 202–382–3153, or by written request sent by fax 202–245–3882).

Dated: April 25, 1990.

R. Thomas Parker,

NACETT Designated Federal Official.

[FR Doc. 90–10101 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3760-9]

Science Advisory Board, Drinking Water Committee; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Drinking Water Committee of the Science Advisory Board will be held on June 21–22, 1990 at the Omni Netherland Plaza, 35 West 5th Street, Cincinnati, Ohio, 45202. This meeting will start at 8:30 a.m. on June 21 and will adjourn no later than 1 p.m. June 22.

The main purpose of this meeting will be to review the Agency's research program in the area of microbiology and to receive briefings on regulations for groundwater, Phase II and Phase V.

Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. C. Richard Cothern, Executive Secretary, Science Advisory Board (A–101F), U.S. Environmental Protection Agency, Washington, DC 20460 by June 1, 1990. The Science Advisory Board Expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total of ten minutes.

Dated: April 25, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90–10102 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

[FRL-3761-1]

Science Advisory Board, Radiation Advisory Committee; Open Meeting

Summary: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Radiation Advisory Committee of the Science Advisory Board will meet May 17–18, 1990 at the St. James Hotel, 950—24 Street, NW., Washington, DC. The meeting will begin at 8 a.m. on Thursday and end 2 p.m. Friday.

Purpose: The Committee will revise its draft report on the Office of Radiation Programs "Estimating Ricks From Indoor Radon Exposure" and draft a report on the ORP's correlation of short-and long-term tests for radon. The Committee will be briefed on the ORP's design of the national survey of radon in schools and on the Office of Drinking Water's criteria documents for radionuclides in drinking water; these two reviews will be conducted by Subcommittees (probaly by publicly announced conference calls). Those interested in these two SAB reviews may find it helpful to attend the relevant portions of this meeting. Copies of the Office Drinking Water documents are available from Greg Helms (202/475–8049). Copies of the Office of Radiation Programs document are available from the Radon Divison (202/475–9605). The Committee will also consider other topics for review in FY90 and its schedule.

FOR FURTHER INFORMATION: The meeting is open to the public; however seating is limited and is on a first come basis. Members of the public wishing to provide oral public comment or have written comment sent to the Committee in advance of the meeting should contract Mrs. Kathleen Conway, Designated Federal Official, or Mrs. Dorothy Clark, Staff Secretary at (202) 382–2552 by 3 p.m. May 14.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90–10103 Filed 4–30–90; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Existing Collection in Use Without an OMB Control Number.

Title: Radiological Defense (RADEF) Monitoring Station and Instrument Inventory (RADSTA) Data Base.

Abstract: The Radiological Defense (RADEF) Monitoring Station and Instrument Inventory (RADSTA) data base provides the States, FEMA regions, and headquarters with an inventory of the locations throughout each State and its local jurisdictions that have the necessary resources to enable them to function as a RADEF monitoring station and provide information on the radiological environment. This information is necessary to enhance the survival of the population from the radiological hazard resulting from a nuclear attack. These monitoring stations are also a resource that could be used in a peacetime radiation catastrophe. The data is used by Federal, Regional, and State program managers to determine the implementation of the RADEF program and the development of RADEF capabilities at State and local levels of government. The information enables program management officials to determine the adequacy of the current instrumentation distribution, and surpluses and shortfalls. The data also helps program managers to determine if sufficient funding, personnel, training, and instrumentation are available to State and local governments to enable them to develop and implement a RADEF program.

Type of respondents: State and local governments, Federal agencies or employees.

Estimate of total annual reporting and recordkeeping burden: 7,095.

Number of respondents: 52.

Estimated average burden hours per response: .33.

Frequency of reponse: Quarterly.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borror, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395–7340, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: April 17, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90–10053 Filed 4–30–90; 8:45 am]

BILLING CODE 6718–01–M

Public Information Competitive Challenge Grants; Intent of Award of Project Grants

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

It is the intent of the Federal Emergency Management Agency (FEMA), under the Civil Defense Act of 1950, to award an estimated ten (10) project grants under Request for Assistance (RFA) EMW–90–3385 under the Emergency Public Information Challenge Grants Program, to stimulate the development of effective emergency public information strategies at state and local levels.

In fiscal year, 1990, FEMA will fund

up to 75 percent of a project, if the prospective grantee can demonstrate a 25 percent financial commitment from another source.

The program is limited to state and local agencies, public and private nonprofit organizations in all ten (10) FEMA Regions, encompassing all fifty (50) States, the District of Columbia, and the United States Territories.

The goal of the program is to increase public awareness of natural and manmade hazards, including nuclear attack preparedness to help decrease the losses of lives and property that currently result from emergency situations. It is also intended to stimulate preparedness measures for communities, households, business and industry, schools, and the like. By publicizing the program and providing wide exposure to the model projects and techniques generated, FEMA intends to raise the profile of the emergency public information function as a critical factor in life safety.

The application package will contain a set of criteria which will be used in the review and selection process. Applications for Assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Mitigation and Recovery Support Division, Office of Acquisition Management, 500 C Street, SW, room 726, Washington, DC 20472, Attn: Eric Rosenberg, Contract Specialist, EMW–90–R–3385. Please include a self-addressed mailing label with the request.

It is estimated that ten (10) project grants of approximately $10,000 each will be awarded as a result of this request, and it is expected that this will entail one in each region of competition. However, FEMA reserves the right to award in any number of locations as it deems to be in its best interest. All requests for Applications received by June 8, 1990 will be honored. All requests received after June 8, 1990 will be honored until supplies are exhausted. It is anticipated that the project grants will be awarded on or before August 13, 1990. Proposers may request funding for a second year option, which will be subject to availability of funding, and which will require a 50 percent match.

Dated: April 24, 1990.

Peg Maloy,

Assistant Associate Director of External Affairs, Office of Public and Intergovernmental Affairs.

[FR Doc. 90–16052 Filed 4–30–90; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosure Of Written Evaluations And Revised Assessment Rating System

AGENCY: Federal Financial Institutions Examination. Council on behalf of the Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision Treasury.

ACTION: Notice of final guidelines and revised rating system.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC) is finalizing certain changes to the current format of the Community Reinvestment Act (CRA) rating system. These changes are in response to the recent amendments to the CRA occasioned by the passage of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) and will become effective July 1, 1990. The FIRREA amendments to the CRA may be summarized as: (1) Requiring disclosure to the public of an institution's CRA rating; (2) requiring that the Federal regulatory agencies provide a written evaluation of an institution's CRA performance utilizing a four-tiered descriptive rating system, in lieu of the existing five-tiered numerical system.

FFIEC Notice

On December 22, 1989, the FFIEC published for public comment in the **Federal Register** (54 FR 52914) proposals to implement all aspects of these amendments. The comment period ended on January 29, 1990. The FFIEC's notice, issued as a set of guidelines, proposed requirements for the examined institutions to make the CRA examination assessments and ratings public. It would have required the institutions to make public the written evaluation containing the rating for their most recent CRA examination by including it in their CRA public comment file. The CRA public comment file is already required by the existing CRA regulations. The FFIEC's notice would have required that an institution place the written evaluation in the public comment file within 30 days of its receipt from the supervisory agency. It would have limited the requirement to making evaluation available in the public comment file to the institution's head office. Also, the notice would have required the institution to make copies of the evaluation available upon request for no more than the duplicative cost.

Comments Received in Response to the FFIEC Notice

The agencies received and reviewed 129 comments from financial institutions, the public, research organizations, governmental agencies, and members of Congress. The major comments relating to the method proposed for making the written CRA Performance Evaluations and CRA ratings public are addressed below.

1. Appeals Process

Many financial institution commenters felt that a process is needed to appeal the agencies' CRA ratings and conclusions. These concerns reflected the view that due to the subjective nature of certain aspects of the rating system, there exists the possibility that examiners may assign different ratings based on a review of identical factual circumstances. Given the potential for adverse public and media reaction to these newly publicized evaluations and ratings, a method for appealing an agency's conclusions was viewed as essential.

The agencies are mindful of the sensitive nature of CRA ratings but do not believe there is a need to institute a formal appeals process. Further, such appeals would unduly prolong the examination process. The agencies believe that the present, consistently employed, examination procedures afford ample opportunity for an institution to make sure of that, prior to the assigning of the final rating, the examiner has all relevant information necessary to make an informed judgment about the institution's CRA record.

During the examination, the examiner engages in discussions with an institution's personnel to elicit all relevant information. Further, it is standard practice that the examiner meet with the appropriate levels of management prior to completing the examination to provide a preliminary assessment of the findings and to give the institution a final opportunity to correct any misunderstandings or supply any further information relevant to the institution's CRA performance. Furthermore, the agencies consider information obtained from community groups that are contacted to discuss the credit needs of community and especially those credit needs that are not being met by the financial institutions located in that community. Additionally, all public comments contained in the institution's CRA public

file are reviewed and considered in assessing that institution's CRA performance, and commenters are contacted if deemed necessary.

The agencies believe that the proposals included in the FFIEC's Notice meet the purposes of the CRA, the needs of the public, and the interests of the institutions. The statue calls for public disclosure of the examiner's assessment of the institution's performance, not a record of the views of the examiner, the institution, and the public. Consequently, the agencies believe the examiner, and by extension the agency the examiner represents, is called upon by the CRA to give his or her own view during the examination process of the institution's performance, giving appropriate consideration to the views of, and facts presented by, the institution and the public. The FFIEC's notice attempted to accommodate the concerns by the financial institution commenters that their views would not be sufficiently reflected in the final evaluation by encouraging, but not requiring, the institution to comment on the written CRA Performance Evaluation and to place those comments in its public file. The public is currently permitted to place any comments it wishes to register in the institution's public comment file, and those might be directed toward the public CRA Performance Evaluation as well.

The agencies believe that their present system of local, regional, or district-level review, along with oversight at the headquarters level, will continue to assure to the greatest degree possible that their examiners produce factually accurate CRA Performance Evaluations and that they effectively communicate justified ratings. Institutions and the public are encouraged to bring to the examiners' attention any information that bears on an institution's record of helping to meet the credit needs of its community.

2. Distribution of Public Evaluations

The FFIEC's notice would have required, at a minimum, that the institution make its written CRA Performance Evaluation and CRA rating publicly available by placing it in the public comment file at the head office. It also would have required that this be done within 30 days of its receipt of the written CRA Performance Evaluation. The institution would have been required to revise the CRA Notice it is already required to maintain in the public lobby of each of its offices, other than off-premises electronic deposit facilities, to inform the public of the availability of the evaluation and where it can be obtained. This system was proposed by the FFIEC primarily to promote ease of administration and because it will be less likely to lead to errors (for example, where a branch inadvertently maintained an out-of-date evaluation in its public comment file). This was viewed as a potential problem, especially for larger institutions serving more than one community.

Community group comments argued strongly for wider availability of the evaluations throughout the various communities an institution might serve. They cited the difficulties, especially for low- and moderate-income people, of having to go to another community to personally retrieve a copy of the evaluation. This problem is most apparent where the institution operates over a large geographic area such as an entire state.

To address this concern, the FFEIC is modifying its proposal to require that the institutions place the evaluation in the CRA public file at the head office and at one designated office in each local community. In other words, the evaluation will be kept at all of the locations where institutions are at present required to keep their CRA public file. The agencies believe this modification enhances convenient public access to the evaluation and does not impose additional administrative burden on institutions.

Some community group commenters suggested requiring institutions to place more than the most recent CRA Performance Evaluation in the public files. While the agencies support disclosure of institutions' CRA performance, they do not believe that it is necessary for an institution to place more than the most recent evaluation in its public file. Such a requirement would exceed the record retention responsibility contemplated by the CRA. Retaining prior adverse evaluations which have become outdated would have minimal bearing on institutions' current CRA performance. Institutions may, at their discretion, include in the public file more than the most recent CRA evaluation.

3. Timing of Disclosure Availability

The FFIEC's notice would have required institutions to place the evaluation in the CRA public file within 30 days after its receipt and would encourage them to place a response in the file as well. Many financial institution commenters felt the 30 day time period was too short. They stated that additional time is needed for board of directors review of the evaluation and response preparation.

The agencies note that examining staffs, as a matter of standard practice, discuss their preliminary assessment of CRA performance with the institution's management at the time of the exit interview. Usually, after completion of the on-site portion of the examination, a report processing period of at least 30 days elapses before transmittal of the examination report to the institution. These practices give the institution ample time between conclusion of the examination and transmittal of the examination report and CRA Performance Evaluation to prepare a response. However, the agencies are modifying the proposal to afford institutions 30 business days to place the evaluation and, if they so choose, their responses, in the CRA public file.

4. Reproduction and Mailing Costs

Industry commenters want to charge reproduction costs and mailing costs. Institutions may charge a reasonable mailing fee since the public has the option to view the documents in the institutions' office at no cost. While the agencies' CRA regulations already permit institutions to charge a reproduction fee for CRA statements, the FFIEC is modifying the regulations to also permit the assessment of mailing fees in connection with public requests for CRA statements.

5. Use of CRA Ratings and Evaluations for Advertising Purposes

Two industry commenters and one community group commenter questioned whether, and how, institutions would be permitted to use CRA evaluations and ratings for advertising or marketing purposes. The FFIEC is not placing any limitations on the institutions' prudent use of this information. The agencies believe that an institution's use of its CRA rating or evaluation must not be misleading in nature. It must clearly represent the fact that the rating or evaluation reflect the institution's CRA performance and not its financial condition.

6. Annual Agency Compilations

Several community group commenters want the agencies to publish annual compilation of the ratings and evaluations for each institution examined in the preceding 12 months. The agencies believe this should not be an interagency undertaking and that they will sufficiently fulfill the intent of Congress by making the evaluations and ratings available to the public through the examined institutions.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board: Glenn E. Loney, Assistant Director, Consumer and Community Affairs (202) 452–3585.

Federal Deposit Insurance Corporation: Janice M. Smith, Director, Office of Consumer Affairs (202) 898–3536.
Office of the Comptroller of the Currency: John H. McDowell, Director, Consumer Activities Division (202) 287–4265.
Office of Thrift Supervision: Jerauld C. Kluckman, Director, Division of Compliance Programs (202) 785–5442.

Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosure of Written Evaluations And Revised Assessment Rating System.

The new section 807 of the Community Reinvestment Act (CRA) requires that the appropriate Federal depository institution regulatory agency shall prepare a written evaluation of the institution's record of meetng the credit needs of its entire community, including low- and moderate-income neighborhoods. Section 807, in addition, requires that these written evaluations have a public and confidential section.

The procedures detailed below will be followed by the supervisory agencies and the financial institutions to disclose to the public an institution's CRA performance evaluation.

Disclosure by the Financial Institution

The appropriate supervisory agency will prepare an institution's CRA performance evaluation upon completion of CRA examinations commencing on and after July 1, 1990 and will transmit the evaluation to the institution at the same time it sends the written CRA examination report. The CRA performance evaluation will be a separate document, distinct from the examination report, thereby maintaining the confidentiality of the examination report and complying with the statutory mandates.

This approach will provide convenient access by the public to each institution's evaluation as it will:

- Ensure public access to the evaluation in communities served by the institution;
- Be consistent with other requirements already imposed on financial institutions by current CRA regulations (*e.g.*, maintenance of CRA statements and public file, posting of CRA notice).
- Facilitate comparisons by the public of the CRA statement prepared by the institution with the evaluation prepared by the supervisory agency. Indirectly, it could encourage development of well documented, expanded CRA statements by each institution, as recommended by the *Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act.* See 54 13742 (April 5, 1989).
- Help encourage greater attention by the institution's board of directors, management and employees to the institution's CRA performance in all community areas served by local depository offices.

The financial institution would be required to:

- Make its most current CRA performance evaluation available to the public within 30 business days of its receipt;
- At a minimum, place the evaluation in the institution's CRA public file located at the head office and a designated office in each local community;
- Add the following language to the institution's required CRA public notice that is posted in each depository facility, within 30 business days of receipt of the first evaluation:

You may obtain the public section of our most recent CRA Performance Evaluation, which was prepared by (*name of agency*), at (*address of head office*) [*if the institution has more than one local community, each office (other than off-premises electronic deposit facilities) in that community shall also include the address of the designated office for that community*].

- Provide a copy of its current evaluation to the public, upon request, and will be authorized to charge a fee not to exceed the cost of reproduction and mailing (if applicable):

The format and content of the institution's evaluation, as prepared by its supervisory agency, may not be altered or abridged in any manner. The institution is encouraged to include its response to the evaluation in its CRA public file.

Format and Content of Required Written Evaluation

In addressing the format and content of disclosures, the agencies believe two considerations should be emphasized. First, the agencies strive to achieve consistency in preparing the evaluations. Consistency will facilitate public understanding of evaluations and promote a common understanding of CRA. A common understanding shared by community groups, regulators, and depository institutions regarding CRA should result in reasonable expectations and constructive dialogue with respect to CRA issues.

Second, the language used in preparing the CRA evaluations should be simple and concise. Evaluations should be written in a manner understandable to the public. Acronyms, technical banking or regulatory terminology, and unexplained banking concepts should not be used.

Uniform Format

Because of the need for confidential treatment of the examination report, the CRA evaluation will be prepared as a stand-alone document, that may be extracted from the CRA examination report, eliminating information precluded by statute or deemed by the agencies to be confidential. The relevant statutory provisions read as follows:

"(c) CONFIDENTIAL SECTION OF REPORT

(1) *Privacy of Named Individuals.*—The confidential section of the written evaluation shall contain all references that identify any customer of the institution, any employee or officer of the institution, or any person or organization that has provided information in confidence to a Federal or State depository institutions regulatory agency.

(2) *Topics Not Suitable for Disclosure.*—The confidential section shall also contain any statements obtained or made by the appropriate Federal depository institutions regulatory agency in the course of an examination which, in the judgment of the agency, are too sensitive or speculative in nature to disclose to the institution or the public.

(3) *Disclosure To Depository Institution.*—The confidential section may be disclosed, in whole or part, to the institution, if the appropriate Federal depository institutions regulatory agency determines that such disclosure will promote the objectives of this Act. However, disclosure under this paragraph shall not identify a person or organization that has provided information in confidence to a Federal or State depository institutions regulatory agency."

(Sec. 1212, FIRREA, Pub. L. No. 101–73, 103 Stat. 183)

Content of Evaluation

To facilitate understanding of the CRA, it is desirable to preface the evaluation with background information outlining the general purposes of the CRA and explaining the evaluation.

Evaluations will be based only on the examiners' findings from the time the examination starts until the CRA Performance Evaluation receives the final approval from the appropriate supervisory agency. The agencies will not include in the CRA Performance Evaluation an institution's verbal or written response to CRA examination findings that are received after the supervisory office has given its final approval to the examiner's Evaluation. The agencies encourage, but do not require, financial institutions to include their response to the evaluation in their CRA Public File.

Evaluation Format

To ensure maximum consistency, the agencies will use a standard format. The

evaluation will consist of four distinct sections:

Section I—Cover Page and General Information Page
Section II—Rating Information—Identification of Ratings
Section III—The Institution's Specific Rating and Narrative Discussing Performance under the Assessment Factors and Supporting Facts
Section IV—Additional Information

Section I—Cover Page and General Information

The cover page will include:

1. The date of the evaluation.
2. The name and address of the institution.
3. The name and address of the supervisory agency.
4. A cautionary note stating that the CRA evaluation is not an assessment of the financial condition of the institution.

A standard "General Information" page will address the purpose of both the CRA and the public written evaluation. It will also provide a statement on the basis for the rating.

Section II—Rating Information

This page will contain the four ratings specified in section 807 of the CRA. A brief description of each of the ratings will precede the presentation of the particular institution's rating and will provide a standard for comparison. For example, presentation of a "Needs to Improve" rating will clearly be identified as not being the worst possible rating.

Section III—Discussion of Institution's Performance

This page will contain:

- The rating for the institution resulting from the examination.
- The performance categories will be listed with the relevant assessment factors, as written in the regulation, spelled out and followed by a narrative supporting the conclusion under each factor.

Section IV.—Additional Information

This section may include any other relevant information that does not appropriately fit in other sections, such as the Metropolitan Statistical Area (MSA) in which the institution is located, the location of branches, and the location of the appropriate HMDA depository.

A sample evaluation is presented below.

Sample Evaluation

Public Disclosure

(Date of Evaluation)

Community Reinvestment Act Performance Evaluation

(Name of Depository Institution)
(Institution's Identification Number)

(Address)

(Name of Supervisory Agency)
(Address)

Note: This evaluation is not, nor should it be construed as, an assessment of the financial condition of this institution. The rating assigned to this institution does not represent an analysis, conclusion or opinion of the federal financial supervisory agency concerning the safety and soundness of this financial institution.

General Information

This document is an evaluation of the Community Reinvestment Act (CRA) performance of (*Name of depository institution*) prepared by (*Name of agency*), the institution's supervisory agency.

The evaluation represents the agency's current assessment and rating of the institution's CRA performance based on an examination conducted as of (*the date on the cover*). It does not reflect any CRA-related activities that may have been initiated or discontinued by the institution after the completion of the examination.

The purpose of the Community Reinvestment Act of 1977 (12 U.S.C. 2901), as amended, is to encourage each financial institution to help meet the credit needs of the communities in which it operates. The Act requires that in connection with its examination of a financial institution, each federal financial supervisory agency shall (1) assess the institution's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with safe and sound operations of the institution, and (2) take that record of performance into account when deciding whether to approve an application of the institution for a deposit facility.

The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101–73, amended the CRA to require the Agencies to make public certain portions of their CRA performance assessments of financial institutions.

Basis for the Rating

The assessment of the institution's record takes into account its financial capacity and size, legal impediments and local economic conditions and demographics, including the competitive environment in which it operates. Assessing the CRA performance is a process that does not rely on absolute standards. Institutions are not required to adopt specific activities, nor to offer specific types or amounts of credit. Each institution has considerable flexibility in determining how it can best help to meet the credit needs of its entire community. In that light, evaluations are based on a review of 12 assessment factors, which are grouped together under 5 performance categories, as detailed in the following section of this evaluation.

Assignment of Rating

Identification of Ratings

In connection with the assessment of each insured depository institution's CRA performance, a rating is assigned from the following groups:

Outstanding record of meeting community credit needs.

An institution in this group has an outstanding record of, and is a leader in, ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Satisfactory record of meeting community credit needs.

An institution in this group has a satisfactory record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Needs to improve record of meeting community credit needs.

An institution in this group needs to improve its overall record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Substantial noncompliance in meeting community credit needs.

An institution in this group has a substantially deficient record of ascertaining and helping to meet the credit needs of its entire delineated community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities.

Discussion of Institution's Performance

Institution's Rating:

This institution is rated [*Insert Applicable Rating*] based on the findings presented below.

I. Ascertainment of Community Credit Needs

Assessment Factor A—Activities conducted by the institution to ascertain the credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution.

(Conclusion/Support):

Assessment Factor C—The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act.

(Conclusion/Support):

II. Marketing and Types of Credit Offered and Extended

Assessment Factor B—The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services offered by the institution.

(Conclusion/Support):

Assessment Factor I—The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community.

(Conclusion/Support):

Assessment Factor J—The institution's participation in governmentally-insured, guaranteed or subsidized loan programs for housing, small businesses, or small farms.

(Conclusion/Support):

III. Geographic Distribution and Record of Opening and Closing Offices

Reasonableness of Delineated Community

(Conclusion/Support):

Assessment Factor E—The geographic distribution of the institution's credit extensions, credit applications, and credit denials.

(Conclusion/Support):

Assessment Factor G—The institution's record of opening and closing offices and providing services at offices.

(Conclusion/Support):

IV. Discrimination and Other Illegal Credit Practices

Assessment Factor D—Any practices intended to discourage applications for types of credit set forth in the institution's CRA Statement(s).

(Conclusion/Support):

Assessment Factor F—Evidence of prohibited discriminatory or other illegal credit practices.

(Conclusion/Support):

V. Community Development

Assessment Factor H—The institution's participation, including investments, in local community development and redevelopment projects or programs.

(Conclusion/Support):

Assessment Factor K—The institution's ability to meet various community credit needs based on its financial condition and size, legal impediments, local economic conditions and other factors.

(Conclusion/Support):

Assessment Factor L—Any other factors that, in the regulatory authority's judgment, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(Conclusion/Support):

Revised Uniform Interagency Community Reinvestment Act Assessment Rating System

Introduction

The revised CRA Rating System provides a comprehensive and uniform method used by the agencies for evaluating the Community Reinvestment Act (CRA) performance of federally regulated financial depository institutions. It ranks the overall performance of financial institutions in helping to meet community credit needs, including those of low- and moderate-income neighborhoods, using a four-tiered descriptive rating system, as mandated by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This rating system is to be used in connection with examinations commencing on and after July 1, 1990.

According to Section 807 of the CRA, these ratings are:

1. "Outstanding record of meeting community credit needs."
2. "Satisfactory record of meeting community credit needs."
3. "Needs to improve record of meeting community credit needs."
4. "Substantial noncompliance in meeting community credit needs."

The overall assessment of an institution is based on its performance in helping to meet various community credit needs. The assessment process uses five "performance categories" which represent a grouping of the twelve assessment factors contained in the regulations which implement the CRA.

The assessment of an institution's record in helping to meet community credit needs takes into account a number of unique and complex factors. Among these factors are the financial capacity, type of operation and size of an institution, legal impediments, local and regional economic conditions and demographics, and the competitive environment in which an institution operates. All of these factors have a significant bearing on how an institution fulfills its obligation to help meet the credit needs of its local community. The overall performance of an institution, however, is primarily related to its efforts and success in helping to meet the credit needs of its local community. A comparison of an institution's performance with that of its peers is not a part of the assessment process.

Because of the various factors considered in the assessment of an institution's record of CRA performance, the rating system guidelines are generally descriptive. Moreover, the rating system recognizes that all attributes do not apply to every institution. Examiners are expected to use their judgment in determining the rating that best describes an institution's performance under CRA. The rating system provides examiners with considerable flexibility so that the nature and composition of a given institution can be properly factored into the overall assessment.

To maintain a balanced perspective, examiners must carefully consider information provided by both the institution and the community. Assessing the CRA performance of an institution is a process that does not rely on absolute standards. Consequently, the rating system purposefully does not preassign any relative weights to individual assessment factors or performance categories. In this way, the rating system provides the flexibility necessary for examiners to weigh the factors and categories consistent with their significance in the context of a particular institution. However, compliance with antidiscrimination laws and regulations, including fair lending and fair housing laws, has great significance in reaching the overall conclusion.

The CRA rating system considers and integrates the guidance provided in the *Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act.* (Joint Statement) See 54 Fed. Reg. 13742 (April 5, 1989). The Joint Statement identifies

the various types of policies, procedures and programs the agencies believe constitute a sound approach by an institution toward fulfilling its CRA responsibilities.

Pursuant to the Joint Statement, an effective CRA process should include methods to ascertain community credit needs on an ongoing basis through outreach efforts and methods to incorporate those findings into the development of products and services the institution decides to offer to meet identified credit needs. The CRA plan should include marketing and advertising programs for lending products and services that inform and stimulate awareness throughout all segments of the institution's local community. The duty to coordinate and monitor the CRA process should be assigned to a senior officer or committee charged with the responsibility to report periodically to the institution's board of directors about CRA efforts, performance, and areas for improvement, where appropriate. An employee training program should be established which addresses policies and procedures of the institutions designed to comply with antidiscrimination laws and regulations and help meet community credit needs.

As part of the management of the CRA process, the agencies also expect institutions to maintain reasonable documentation of the activities conducted to implement the institution's CRA policies, procedures and programs. Finally, the agencies believe it would be especially useful for an institution to expand its CRA statement to include a description of the activities the institution has undertaken to meet its responsibilities under CRA. This expansion would enhance the prospects for an informed dialogue about CRA-related issues between the institution and members of the public.

The following CRA rating profiles have been developed to assist the agencies in providing meaningful written evaluations that best describe an institution's CRA performance. By providing a thorough description of the attributes of performance for each rating category and assessment factor, the rationale for an institution's ultimate CRA rating may be more readily understood. In applying the profiles, it is not expected that each attribute will be met. Inherent in the rating system is the fact that each institution is different in type, size, product mix, customer orientation, and geography. The rating assigned to an institution will reflect the CRA rating profile that best, but perhaps not fully, describes the institution's CRA performance. An institution that is considered outstanding, for example, will have substantially exhibited the characteristics (to the extent applicable) found in the CRA rating profile for an outstanding performance.

CRA Rating Profiles

Outstanding Record of Meeting Community Credit Needs

An institution in this group has an outstanding record of ascertaining and helping to meet the credit needs of its entire local community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. CRA is a demonstrated and important component of the institution's planning process and is explicitly reflected in its formal policies, procedures, and training programs. The management of the CRA process is thorough and includes comprehensive and readily available documentation of the institution's CRA-related activities. The board of directors and senior management are highly involved in planning for, implementing, and monitoring the institution's CRA-related performance. The institution has played a leadership role in promoting economic revitalization and growth and/or has engaged in other activities to help meet community credit needs. The institution is highly involved with a broad spectrum of community organizations and the public sector. The institution employs affirmative outreach efforts to determine community credit needs and addresses them through innovative product development. The institution's marketing aggressively promotes credit services including, when appropriate, special programs which are responsive to the needs of the community and, as a result, the institution has extended loans which significantly benefit the community. The CRA statement correctly lists all of the institution's credit products available throughout its local community. The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods. The geographic distribution of the institution's credit extensions, applications, and denials reflect a reasonable penetration of all segments of its local community. Internal monitoring procedures are well documented. The institution is in substantial compliance with all provisions of the antidiscrimination laws and regulations, including fair lending and fair housing laws. The institution has demonstrated the ability to monitor and assess its own performance, and it presents no supervisory concern in CRA matters.

Satisfactory Record of Meeting Community Credit Needs

An institution in this group has a satisfactory record of ascertaining and helping to meet the credit needs of its entire local community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. CRA is routinely considered in the institution's planning process. The CRA program, including goals, objectives and methodology for self-assessment, is articulated and generally understood by all levels of the institution, but may not be explicitly reflected in its formal policies, procedures, and training programs. Employee training for CRA is adequate. The management of the CRA process is satisfactory and includes adequate documentation of the institution's CRA-related activities. The board of directors and senior management have regular involvement in the institution's CRA planning, implementation and monitoring process. The institution has a satisfactory level of involvement with most community organizations and the public sector. The institution determines its community credit needs and normally addresses them through appropriate loan product development. The institution has played a supportive role in promoting and participating in economic revitalization and growth and/or has demonstrated a willingness to explore other activities which help to meet community credit needs. The institution has marketed credit services which address identified community credit needs and has extended loans which benefit its local community. The CRA statement correctly lists the majority of the institution's credit products available throughout its local community. The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods. The geographic distribution of the institution's credit extensions, applications, and denials demonstrates a reasonable penetration of all segments of its local community. The institution is in compliance with the substantive provisions of antidiscrimination laws and regulations, including fair lending and fair housing laws. The institution does not present a supervisory concern in CRA matters. It may, however, benefit from additional encouragement to ascertain and help meet community credit needs, initiate community contracts, or pursue special programs on an ongoing and more aggressive basis.

Needs to Improve Record of Meeting Community Credit Needs

An institution in this group needs to improve its overall record of ascertaining and helping to meet the credit needs of its entire local community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. The institution's program for meeting responsibilities under CRA is inadequate; specific, identifiable weaknesses are apparent. The board of directors and senior management provide only limited support to the CRA training of personnel. The institution does not adequately document or monitor its CRA-related activities. The board of directors and senior management have limited involvement in the institution's CRA planning, implementation and monitoring process, if such process exists. The institution engages in limited affirmative outreach to the community, passively determines credit needs and addresses them primarily with existing standard loan products. The institution has limited, if any, involvement with local community organizations and the public sector. The institution has played only a limited role in developing projects to foster economic revitalization and growth, but management may express a willingness to consider participation in other activities which help meet community credit needs if they are presented to the institution. The institution has limited marketing of credit services responsive to community credit needs, and advertisements are not generally reflective of identified community credit needs. The CRA statement may not accurately reflect certain credit products that the institution makes available throughout its local community. The institution's delineated community is unreasonably and may exclude some low- and moderate-income neighborhoods. The geographic distribution of the institution's credit extensions, applications, and denials demonstrates an unjustified, disproportionate lending pattern, adversely impacting low- and moderate-income neighborhoods within its local community. The institution is not in compliance with the substantive provisions of antidiscrimination laws and regulations, including fair lending and fair housing laws. The institution is of supervisory concern in CRA matters and requires strong encouragement to improve the level of performance.

Substantial Noncompliance in Meeting Community Credit Needs

An institution in this group has a substantially deficient record of ascertaining and helping to meet the credit needs of its entire local community, including low- and moderate-income neighborhoods, in a manner consistent with its resources and capabilities. CRA responsibilities are rarely, if ever, considered within the institution's planning process or its policies, procedures, or training programs. The institution does not have a viable program for meeting responsibilities under CRA. The institution does not actively monitor its CRA activities. Little or no documentation exists to demonstrate an adequate level of performance. The board of directors and senior management have little, if any, involvement in the institution's CRA planning, implementation and monitoring process. The institution has no meaningful interaction with community organizations and the public sector. The institution has not actively promoted community economic revitalization or growth, and it has shown very limited interest in pursuing other activities to address community credit needs. The institution is not generally aware of existing credit needs and may not have appropriate loan products to address them. The institution does not advertise credit services based upon identified community needs. The CRA statement is materially inaccurate with respect to the types of credit the institution is willing to make available throughout its local community. The institution's delineated community is unreasonable and excludes low- and moderate-income neighborhoods. The institution's restrictive credit policies contribute to unjustified, disproportionate lending patterns, adversely impacting low- and moderate-income neighborhoods within its local community. The institution is in substantial noncompliance with antidiscrimination laws and regulations, including fair lending and fair housing laws. The institution is of significant supervisory concern in CRA matters and requires the strongest supervisory encouragement to be responsive to community credit needs.

Performance Categories Summary

To evaluate an institution's CRA performence, the twelve assessment factors and criteria are grouped into the following performance categories:

I. Ascertainment of Community Credit Needs.

II. Marketing and Types of Credit Offered and Extended.

III. Geographic Distribution and Record of Opening and Closing Offices.

IV. Discrimination and Other Illegal Credit Practices.

V. Community Development.

Performance Categories

Below are *guidelines* for determining the level of a financial institution's performance under each assessment factor as prescribed in the implementing regulations (designated below by the letters (A) through (L)). The various performance categories are generally descriptive, and *all* attributes do not necessarily apply to *every* institution.

I. Ascertainment of Community Credit Needs

The institution is evaluated in this category on its employment of effective techniques for gathering information to identify community credit needs. Examiners evaluate the effectiveness of an institution's review and development of products and services related to identified community credit needs. The evaluation process includes the following assessment factors:

(A) Activities conducted by the institution to ascertain the credit needs of its community, including the extent of its efforts to communicate with members of its community regarding the credit services being provided by the institution.

(C) The extent of participation by the institution's board of directors in formulating policies and reviewing the institution's performance with respect to the purposes of the Community Reinvestment Act.

Outstanding

Assessment Factor A

The institution has an outstanding record of determining the credit needs of its local community, including low- and moderate-income neighborhoods. This may take the form of:

- Ongoing, meaningful contracts with a full range of individuals and groups representing civic, religious, neighborhood, minority, small business, and commercial and residential real estate development;
- Ongoing contract with officials and leaders from city, county, state and federal governments and active participation in public programs; and,
- Established, productive releationships such as those with private, non-profit developers or financial intermediaries resulting in public/private partnership activities.

The institution regularly collects and analyzes local demographic data in relation to its leading activities.

The board of directors and senior management maintain a proactive attitude and a high degree of responsiveness in addressing community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Senior management performs systematic and regular reviews of lending services.

The institution offers products well-suited to identified needs, which may include products that make use of government-insured and publicly-sponsored programs.

The board of directors and senior management demonstrate willingness to explore and offer conventional products with special features and more flexible lending criteria to make credit more widely available, throughout the institution's local community, within the bounds of safe and sound lending practices.

Assessment Factor C

CRA is a demonstrated and important component of the board of director's planning process.

A formal, written CRA program exists with goals, objectives and methodology for self-assessment.

The board of directors and senior management:

- Are an integral part of the CRA process and activities.
- Exercise active policy oversight and conduct regular reviews of CRA activities and performance.
- Ensure than an annual, or more frequent, analysis of the disposition of loan applications is made to ensure that potential borrowers are treated in a fair and nondiscriminatory manner.
- Are personally involved in activities designed to develop, improve and enhance the local community.
- Consistently support prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide active support to the CRA training of personnel.
- Have expanded their CRA Statement describing the institution's CRA policies and programs, discussing the results of their self-assessment, and summarizing documentation of the institution's performance.
- Effectively ensure that CRA technical regulatory requirements are consistently met.

Satisfactory

Assessment Factor A

The institution has a satisfactory record of determining credit needs of its local community, including low- and moderate-income neighborhoods. This may take the form of:

- Regular contacts with a large range of individuals and groups representing civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- Regular contact with officials and leaders from city, county, state, and federal governents and some participation in public programs; and,
- Regular contact with private, non-profit developers or financial intermediaries that may be used for public/private partnership opportunities.

The institution periodically reviews published, local demographic data in relation to its lending activities.

The board of directors and senior management satisfactorily respond to local input regarding community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Senior management performs informal reviews of leading services.

The institution offers products reasonably suited to identified needs, which may include products that make use of government-insured and publicly-sponsored programs.

The institution offers a variety of conventional products, and may explore and offer conventional products with special features and more flexible lending criteria to make credit more widely available, throughout its local community, within the bounds of safe and sound lending practices.

Assessment Factor C

CRA is routinely considered in the board of directors' planning process.

The institution's CFA program, including goals, objectives and methodology for self-assessment, is articulated and generally understood by all levels of the institution, but may not be explictly reflected in its formal policies, procedures and training programs.

The board of directors and senior management:

- Are generally involved in the CRA process and activities.
- Exercise policy oversight and conduct occasional reviews of CRA activities and performance.
- Ensure that at least an annual analysis of the disposition of loan applications is made to ensure that potential borrowers are treated in a fair and nondiscriminatory manner.
- Have some involvement in activities designed to develop, improve and enhance the local community.
- Consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide adequate support to the CRA training of personnel.
- Generally ensure that CRA technical regulatory requirements are consistently met.

The institution's CRA Statement satisfactorily meets the regulatory requirements. The board of directors and senior management have expanded the statement to describe the institution's CRA policies, programs and results; however, the material in the expanded statement might not be fully descriptive of the institution's performance.

Needs to Improve

Assessment Factor A

The institution needs to improve its contacts within the community to determine the credit needs of its local community, including low- and moderate-income neighborhoods. This is represented by:

- limited contact with individuals and groups representing civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- limited contact with officials and leaders from city, county, state, and federal governments and marginal effort to participate in public programs; and,
- a lack of productive contact with private, non-profit developers or financial intermediaries that may be used for public/private partnership opportunities.

The institution occasionally considers or analyzes published demographic data in relation to its lending activities.

The board of directors and senior management show limited response to outside input regarding community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small business, small farms, and rural development.

Senior management infrequently reviews its CRA-related activities or its lending services in response to changing credit needs.

Credit products may not be structured or sufficiently varied to address the identified credit needs of certain segments of the institution's local community, especially in low- and moderate-income neighborhoods.

The institution is not a significant participant in government-insured and/or publicly-sponsored programs.

Limited efforts have been made to offer a variety of conventional products or explore special features and more flexible lending criteria to make sound credit more widely available throughout the institution's local community.

Assessment Factor C

CRA is sometimes considered in the board of director's planning process.

The institution's CRA program is inadequate and may lack goals, objectives and methodology for self-assessment.

The board of directors and senior management:

- Have limited involvement in the CRA process and activities.
- May exercise some policy oversight but conduct infrequent reviews of CRA activities and performance.
- Do no ensure that any more than a limited analysis of the disposition of loan applications is made to ensure that potential borrowers are treated in a fair and nondiscriminatory manner.
- Have limited involvement in activities designed to develop, improve and enhance the local community.
- May be reluctant to consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more conventional loan products.
- Provide only limited support to the CRA training of personnel.
- May be lax in ensuring that CRA technical regulatory requirements are met.

Substantial noncompliance

Assessment Factor A

The institution does not conduct, or has little involvement in, activities that determine credit needs of its local community, including low- and moderate-income neighborhoods. This is represented by few, if any, contacts with:

- Representatives of civic, religious, neighborhood, minority, small business and commercial and residential real estate development;
- Private, non-profit developers or financial intermediaries that may be used for public/private partnership opportunities; and,
- Officials and leaders from city, county, state and federal governments, and the institution makes little or no effort to participate in public programs.

The institution is unaware of, or ignores, the existence of demographic data and does not use it to analyze its lending activities.

The board of directors and senior management rarely (or, do not) respond to community credit needs through product development, including loans for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Lending services are rarely (or, are not) reviewed in response to changing credit needs.

Customer input and/or information on credit needs is rarely (or, is not) taken into account in product development, especially from customers in low- and moderate-income areas.

There is nominal or no participation in government-insured and/or publicly-sponsored programs.

There is little or no effort made to offer a variety of conventional products or explore special features and more flexible lending criteria to make sound credit more widely available throughout the institution's local community.

Assessment Factor C

CRA is rarely (or, is not) considered in the board of director's planning process.

The institution does not have an articulated and implemented program for dealing with its responsibilities under CRA.

The board of directors and senior management:

- Have little, if any, involvement in the CRA process and activities.
- Exercise little, if any, policy oversight with respect to CRA and rarely (or, do not) conduct reviews of CRA activities and performance.
- Rarely (or does not) ensure that an analysis of the disposition of loan applications is made to ensure that potential borrowers are treated in a fair and nondiscriminatory manner.
- Have little, if any, involvement in activities designed to develop, improve and enhance the local community.
- Are reluctant to consider prudent but innovative underwriting criteria that help address community credit needs and that may not fall within the criteria of the institution's more coventional loan products.
- Provide little, if any, support to CRA training of personnel.
- Rarely (or, do not) ensure that CRA technical regulatory requirements are met.

II. Marketing and Types of Credit Offered and Extended

The institution is evaluated in this category on its marketing efforts to promote the types of credit it is prepared to offer to its community, product implementation, and overall delivery of credit services relative to the institution's CRA Statement. Emphasis is placed on special credit related programs. The evaluation process will consider the following assessment factors:

(B) The extent of the institution's marketing and special credit-related programs to make members of the community aware of the credit services it offers.

(I) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business and small farm loans within its community; or the purchase of such loans originated in its community.

(J) The institution's participation in governmentally-insured, guaranteed, or subsidized loan programs for housing, and small businesses or small farms.

Outstanding

Assessment Factor B

The institution has implemented sound marketing and adverstising programs that are approved, reviewed and monitored by senior management and the board of directors. The programs inform all segments of the institution's local community of general financial products and services offered, including those that have been developed to address identified community credit needs.

Marketing strategies ensure that products and services are responsive to identified community needs.

Advertisements are designed to stimulate awareness of credit services throughout the institution's entire local community, including low- and moderate-income neighborhoods. This includes use of special media aimed at particular segments of the community.

Complete, readily available marketing and advertising records are maintained and internally reviewed for compliance with applicable laws and regulations.

Personnel routinely provide assistance to individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution has undertaken significant efforts to affirmatively address a substantial portion of the identified community credit needs through the origination and purchase of

loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Lending levels reflect exceptional responsiveness to the most pressing community credit needs. A substantial majority of loans are within the delineated community. Loan volume, in relation to the institution's resources and the community's credit needs, exceeds expectations.

The CRA Statement correctly lists all of the institution's credit products available throughout its local community.

Assessment Factor J

When an identified community credit need exists, the institution takes a leadership role in meeting that need and affirmatively participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses, small farms, and rural development.

Satisfactory

Assessment Factor B

The institution has implemented adequate marketing and advertising programs that function outside the formal oversight of senior management and the board of directors. The programs are designed to inform all segments of the institution's local community of general financial products and services offered and any products that may have been developed to address identified community credit needs.

Although advertisements, including those for credit products, are carried in widely circulated local media, additional advertising in media directed toward low- and moderate-income neighborhoods may be needed in order for the advertising program to be effective throughout the institution's local community.

The institution maintains adequate records of its advertising, and these are occasionally reviewed for effectiveness in all segments of its local community. The institution may have established, but limited, policies and procedures to review proposed marketing campaigns for compliance with applicable laws and regulations.

Personnel generally provide assistance to individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution has undertaken efforts to address a significant portion of the identified community credit needs through the origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Lending levels reflect a general responsiveness to the most pressing community credit needs. A significant volume of loans are within the institution's delineated community. Loan volume is adequate in relation to the institution's resources and its community's credit needs.

The CRA Statement correctly lists the majority of the institution's credit products available throughout its local community.

Assessment Factor J

When an identified community credit need exists, the institution generally takes some steps to help meet that need and frequently participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses, small farms, and rural development.

Needs to Improve

Assessment Factor B

The institution's marketing and advertising programs have limited oversight by senior management and the board of directors, and may require revision or expansion to inform all segments of the institution's local community of general financial products and services offered.

Marketing strategies are primarily designed to promote an image of the institution as a provider of general financial products and services or as a provider of only deposit services.

Although advertisements are primarily carried in local media, the institution does not advertise in media specifically directed to low- and moderate-income neighborhoods within its local community.

The institution maintains limited documentation of its advertising. The advertising is frequently reviewed for compliance with applicable laws and regulations. Marketing campaigns are infrequently reviewed for their effectiveness in informing all segments of the institution's local community.

Personnel make limited effort to assist individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution is marginally involved in addressing identified community credit needs through organization and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Lending levels reflect marginal responsiveness to the most pressing community credit needs. A significant volume of loans may be outside the institution's delineated community, and/or loan volume may be low in relation to the institution's resources and its community's credit needs.

The CRA Statement may not accurately list certain credit products that the institution makes available throughout its local community and/or may list some credit products that the institution does not make available.

Assessment Factor J

When an identified community credit need exists, the institution sometimes becomes involved in helping to meet that need and infrequently participates in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses, small farms, and rural development.

Substantial Noncompliance

Assessment Factor B

The institution's marketing and advertising programs, if existent, are inadequate as they do not address credit products directed to all segments of the institution's local community, including low- and moderate-income neighborhoods.

The institution does not maintain sufficient documentation of its advertising. The advertising is rarely (or, is not) reviewed for compliance with applicable laws and regulations.

There is little, if any, effort to assist individuals and groups in understanding and applying for credit.

Assessment Factor I

The institution is minimally involved in addressing identified community credit needs through origination and purchase of loans, including those for residential mortgages, housing rehabilitation, home improvement, small businesses, small farms, and rural development.

Lending levels reflect little, if any, responsiveness to the most pressing community credit needs. A substantial majority of loans are outside the institution's delineated community, and/or loan volume is excessively low in relation to the institution's resources and its community's credit needs.

The CRA Statement is materially inaccurate with respect to the types of credit the institution is willing to make available throughout its local community.

Assessment Factor J

When an identified community credit need exists, the institution rarely (or, never) becomes involved in helping to meet that need or in participating in governmentally-insured, guaranteed, or subsidized loan programs for housing, small businesses, small farms, and rural development.

III. Geographic Distribution and Record of Opening and Closing Offices

The evaluation process under this category will consider the reasonableness of the delineated community, the geographic distribution of the institution's loans and the effects of opening or closing any offices, and the following assessment factors:

(E) The geographic distribution of the institution's credit extensions, credit applications, and credit denials.

(G) The institution's record of opening and closing offices and providing services at offices.

Outstanding

Reasonableness of Delineated Community

The institution's delineated community meets the purpose of the CRA and does not exclude low- and moderate-income neighborhoods.

Assessment Factor E

The institution has a documented analysis demonstrating that the geographic distribution of its credit extensions, applications, and denials reflect a reasonable penetration of all segments of its local community, including low- and moderate-income neighborhoods.

The institution has formulated procedures to identify the geographic distribution of its loan products. This information is documented and used by the board of directors and senior management in the institution's establishment of loan policies, products and services, and marketing plans.

Assessment Factor G

Offices are readily accessible to all segments of the institution's local community. Business hours and services are tailored toward the convenience and needs of the community and are reviewed for their effectiveness on an ongoing basis.

Prior to closing offices, the institution assesses the potential impact on its ability to continue offering an appropriate level of services throughout its local community. This assessment includes the institution's taking into consideration information and ideas obtained from consultations with members of the community to minimize the adverse impact of an office closing.

The institution's record of closing offices has not had an adverse impact on its local community.

Satisfactory

Reasonableness of Delineated Community

The institution's delineated community meets the purpose of the CRA and does not include low- and moderate-income neighborhoods.

Assessment Factor E

The geographic distribution of the institution's credit extensions, applications, and denials demonstrates a reasonable penetration of all segments of its local community, including low- and moderate-income neighborhoods.

The geographic distribution of the institution's loan products may be used by the board of directors and senior management in the establishment of loan policies, products and services, and marketing plans.

Assessment Factor G

Offices are reasonably accessible to all segments of the institution's local community.

Periodic review of services and business hours assures accommodation of all segments of the institution's local community.

The institution makes an adequate assessment of the potential adverse impact of an office closing on its local community. This assessment includes contacts with members of the community for their views on the impact and ways to minimize it.

The institution's record of opening and closing offices has not adversely affected the level of services available in low- and moderate-income neighborhoods within its local community.

Needs to Improve

Reasonable of Delineated Community

The institution's delineated community is unreasonable and may exclude some low- and moderate-income neighborhoods. The institution's guidelines for defining its community need revision.

Assessment Factor E

The geographic distribution of the institution's credit extensions, applications, and denials demonstrates an unjustified, disproportionate pattern with respect to the activity inside its delineated community as compared to the activity outside the delineated community and/or with respect to the distribution of loans, applications and denials within the various segments of its community.

The board of directors and senior management may be unaware of the geographic distribution of the institution's loan products or accord inadequate or no review of lending policies and practices with regard to how they affect lending patterns within their local community.

Senior management has not taken adequate corrective action on previously identified unreasonable lending patterns.

Assessment Factor G

Accessibility to the institution's offices is difficult for certain segments of its local community.

Business hours may be inconvenient relative to the needs of the institution's local community, particularly low- and moderate-income neighborhoods, and they are infrequently reviewed for effectiveness.

The institution's assessment of the potential adverse impact an office closing will have on its local community and of methods needed to minimize that impact is inadequate and needs revision or expansion.

The institution's record of opening and closing offices indicates adverse impact upon certain segments of its local community, particularly low- and moderate-income neighborhoods, although the result may be unintentional.

Substantial Noncompliance

Reasonableness of Delineated Community

The institution's delineated community is unreasonable and excludes low- and moderate-income neighborhoods. The institution's guidelines for defining its community need substantial revision.

Assessment Factor E

The geographic distribution of the institution's credit extensions, applications, and denials does, in fact, indicate unreasonable lending patterns inside and outside its delineated community, particularly low- and moderate-income neighborhoods.

The board of directors and senior management disregard the geographic distribution of the institution's loan products and have taken limited or no corrective action on previously identified unreasonable lending patterns.

Loan policies and procedures contain restrictions which have or can be expected to have a significant adverse

impact on loan availability in low- and moderate-income neighborhoods within the institution's local community.

Assessment Factor G

There is limited accessibility to the institution's offices for certain segments of its local community, particularly low- and moderate-income neighborhoods.

Business hours are inconsistent with the needs of the institution's local community, and they are rarely, if ever, reviewed for effectiveness.

The institution rarely, if ever, makes an assessment of the potential impact of its office opening and closing practices on its local community.

The institution's record of opening and closing offices suggests a continuing pattern of adverse impact upon certain segments of its local community, particularly low- and moderate-income neighborhoods.

IV. Discrimination and Other Illegal Credit Practices

The institution is evaluated in this category on its compliance with antidiscrimination and other related credit laws, including efforts to avoid doing business in particular areas or illegal prescreening. The evaluation process will consider the following assessment factors:

(D) Any practices intended to discourage applications for types of credit set forth in the institution's CRA Statement(s).

(F) Evidence of prohibited discriminatory or other illegal credit practices.

Outstanding

Assessment Factor D

The institution affirmatively solicits credit applications from all segments of its local community, with a strong focus on low- and moderate-income neighborhoods.

The board of directors and senior management have developed complete written policies, procedures, and training programs to assure the institution does not illegally discourage or prescreen applicants.

The institution regularly assesses the adequacy of implemented, nondiscriminatory policies, procedures and training programs through internal review and management reporting mechanisms.

Assessment Factor F

The institution is in substantial compliance with all provisions of the antidiscimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Satisfactory

Assessment Factor D

The institution generally solicits credit applications from all segments of its local community, including low- and moderate-income neighborhoods.

The board of directors and senior management have developed adequate policies, procedures and training programs supporting nondiscrimination in lending and credit activities. Minor revisions or expansion may be required.

The institution periodically assesses the adequacy of implemented, nondiscriminatory policies, procedures and training programs through internal reviews and management reporting mechanisms.

Assessment Factor F

The institution is in compliance with the substantive provisions of antidiscrimination laws and regulations, including, the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Any violations disclosed are nonsubstantive in nature, and corrections are promptly made by senior management.

Needs to Improve

Assessment Factor D

Although the institution accepts credit applications from all segments of its local community, available data suggests the possibility of isolated, illegal discouraging or prescreening of applicants.

The institution's policies, procedures and training programs are inadequate and require significant revision or expansion to support nondiscrimination in lending and credit activities.

The review and/or reporting mechanism developed by the board of directors and senior management need improvement to fully assure that the institution does not illegally discourage or prescreen applicants.

Assessment Factor F

The institution is not in compliance with the substantive provisions of antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

Substantive violations are noted on an isolated basis. Violations may be repeated from previous examinations.

Substantial Noncompliance

Assessment Factor D

Available data indicates that the institution rarely, if ever, considers credit applications from all segments of its local community. The volume of applications from low- and moderate-income neighborhoods is very low or nonexistent.

The institutions's policies, procedures and programs are either nonexistent or in need of substantial revision to properly support nondiscrimination in lending and credit activities.

The review and/or reporting mechanisms developed by the board of directors and senior management and designed to assess implemented policies, procedures, and training programs to support nondiscrimination in lending and credit activities are inadequate and require substantial revision. Or, the institution has not developed any review or reporting mechanisms to assure that the institution does not illegally discourage or prescreen applicants.

Assessment Factor F

The institution is in substantial noncompliance with antidiscrimination laws and regulations, including: the Equal Credit Opportunity Act, the Fair Housing Act, the Home Mortgage Disclosure Act, and any agency regulations pertaining to nondiscriminatory treatment of credit applicants.

The institution has demonstrated a pattern or practice of prohibited discrimination, or has committed a large number of substantive violations of the antidiscrimination laws and regulations. Violations may be repeated from previous examinations.

V. Community Development

An institution is evaluated in this category on its participation in community development and/or other factors relating to meeting local credit needs. The evaluation process will consider the following assessment factors:

(H) The institution's participation, including investments, in local community development and redevelopment projects or programs.

(K) The institution's ability to meet various community credit needs based on its financial condition and size, and legal impediments, local economic conditions and other factors.

(L) Other factors that, in the regulatory authority's judgment, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

Outstanding

Assessment Factor H

The institution has maintained, through ongoing efforts, a high level of participation in development and redevelopment programs within its local community, often in a leadership role.

Assessment Factor K

The institution has played a leadership role in developing and/or implementing specific projects promoting economic revitalization and growth, consistent with its size, financial capacity, location, and current local economic conditions. Its participation in these projects may have taken, for example, the form of investment, direct loans or loans through intermediaries, financial services, and technical assistance.

The institution has established good working relationships with government and private sector representatives to identify opportunities for the institution's involvement in addressing community development needs.

Assessment Factor L

The institution has engaged in other meaningful activities, not covered under other performance categories, which contribute to the institution's efforts to help meet community credit needs.

Satisfactory

Assessment Factor H

The institution is generally aware of any community development and redevelopment programs within its community, and periodically participates in such programs.

Assessment Factor K

The institution generally supports the development or implementation of specific projects promoting economic revitalization and growth, consistent with its size, financial capacity, location, and current local conditions. Its participation in these projects may have taken, for example, the form of investment, direct loans or loans through intermediaries, financial services, and technical assistance.

The institution has informed government and private sector representatives of its interest in participating in community development projects, and is already involved in some aspects of planning or implementation.

Assessment Factor L

The institution has demonstrated a willingness to explore other activities contributing to its efforts to help meet community credit needs which are not covered in other performance categories.

Needs to Improve

Assessment Factor H

The institution has limited awareness of any community development and redevelopment programs within its local community and rarely seeks them out or participates in them.

Assessment Factor K

The institution has played only a limited role in developing projects to foster economic revitalization and growth, and has taken limited action to learn or support the specific features of existing programs.

The institution has rarely contacted government and private sector representatives to discuss community development needs and opportunities.

Assessment Factor L

The institution expresses a willingness to consider participation in other activities designed to meet community credit needs only when specific proposals or requests are brought to its attention.

Substantial Noncompliance

Assessment Factor H

The institution is unaware of, or not interested in, the existence and nature of community development programs within its local community. The institution has made little or no effort to participate in these programs.

Assessment Factor K

The institution has played a very small, if any, role in developing or implementing specific projects promoting economic revitalization and growth.

The institution has made little, if any, effort to contact government or private sector representatives to learn about community development needs or the features of existing programs.

Assessment Factor L

Senior management has shown little, if any, interest in pursuing other activities, not covered under other performance categories, which would enhance the institution's effectiveness in helping address community credit needs.

Dated: April 25, 1990.

Keith J. Todd,

Assistant Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 90-10001 Filed 4-30-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; City of Salem Municipal Port Authority/Salem Marine Terminal Corp. Terminal and City of Los Angeles/Stevedoring Services of America Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-200349

Title: The City of Salem Municipal Port Authority/Salem Marine Terminal Corporation Terminal.

Parties: The City of Salem Municipal Port Authority (Port) Salem Marine Terminal Corporation (SMTC).

Synopsis: The Agreement provides for SMTC to lease premises and operate public marine terminal facilities at the Port District in Salem, New Jersey. The Agreement also authorizes the parties to discuss, fix, or regulate rates or other conditions of service and engage in exclusive, preferential, or cooperative working arrangements, including the exclusive right to perform any and all stevedoring and other cargo movement activities conducted at the premises. The term of the Agreement is for 20 years.

Agreement No.: 224-010930-003

Title: City of Los Angeles/Stevedoring Services of America Terminal Agreement.

Parties: City of Los Angeles, Stevedoring Services of America (SSA).

Synopsis: The Agreement amends the basic agreement by extending SSA's right to use three (3) cranes through June 30, 1990.

By Order of the Federal Maritime Commission.

Dated: April 25, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90-10005 Filed 4-30-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Amsterdam-Rotterdam Bank N.V. and Stichting Amro, Both of Amsterdam, The Netherlands; Proposal To Engage in Certain Securities-Related Activities

Amsterdam-Rotterdam Bank N.V. and Stichting Amro, both of Amsterdam, The Netherlands (the "Applicants"), have applied pursuant to section 4(c)(8) of the Bank Holding Compnay Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through their subsidiary, Amro Securities, Inc., New York, New York ("Company"), in the following securities-related activities to be conducted on a nationwide and worldwide basis: (1) Underwriting, brokering, and dealing in, and acting as a private placement agent with respect to obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers acceptances and certificates of deposit ("eligible securities"); (2) underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities"); (3) providing investment advisory and brokerage services on a combined basis to institutional and retail customers ("full-service brokerage"), including acting as a riskless principal; (4) private placement of all types of securities as agent; (5) exercising discretion in buying and selling securities on behalf of institutional clients, and providing, on an explicit fee basis, discretionary management of short-term monies for institutional clients; and (6) providing for institutional customers advice in connection with (i) the structuring of and arranging for interest rate and currency "swaps", interest rate "cap" and similar transactions; and (ii) merger, acquisition/divestiture and financing transactions and valuations and fairness opinions related to merger, acquisition and similar transactions (all types of advice collectively referred to as "financial advice").

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicants have applied to conduct these securities-related activities substantially in accordance with the limitations set forth in Regulation Y and the Board's Orders approving those activities for a number of bank holding companies. *See, e.g.*, 12 CFR 225.25(b)(16), *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988) (underwiting, brokering and dealing in eligible securities); *Westpac Banking Corporation*, 75 Federal Reserve Bulletin 398 (1989), and *Bankers Trust/Citicorp/Morgan*, 73 Federal Reserve Bulletin 473 1987) (underwriting and dealing in ineligible securities); 12 CFR 225.25(b)(15), *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988), and *PNC Financial Corp.*, 75 Federal Reserve Bulletin 396 (1989) (full-service brokerage); *(see also Bankers Trust New York Corporation*, 74 Federal Reserve Bulletin 695 (1988)); *J.P. Morgan & Co. Incorporated*, 76 Federal Reserve Bulletin 26 (1990), and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) (private placement transactions as agent and riskless principal transactions); *J.P. Morgan & Co. Incorporated*, 73 Federal Reserve Bulletin 810 (1987) and *Sovran Financial Corporation*, 73 Federal Reserve Bulletin 744 (1988) (investment discretion); and *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987) (financial advice). With respect to underwiring and dealing in ineligible securities, Applicants, Compnay, and their U.S. affiliates agree to comply substantially with the limitations previously established by the Board for these activities as recently modified by *Canadian Imperial Bank of Commerce/The Royal Bank of Canada/Barclays PLC*, 76 Federal Reserve Bulletin 158 (1990).

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Applicants contend that permitting bank holding companies to engage in the proposed activities would result in increased competition and gains in efficiency.

Applicants contend that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed ineligible securities underwiting and dealing activity, Applicants state that, consistent with section 20, Company would not be "engaged principally" in such activties on the basis of the restriction, previously approved by the Board, on the amount of revenues derived from the proposed activity relative to the total business conducted by the Compnay.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 25, 1990.

Board of Governors of the Federal Reserve System, April 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-10039 Filed 4-30-90; 8:45 am]

BILLING CODE 6210-01-M

Cass Commercial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 21, 1990.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Cass Commercial Corporation,* St. Louis, Missouri; to acquire 100 percent of the voting shares of Cass Bank of St. Louis, St. Louis, Missouri, a *de novo* bank.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Miami County National Bank of Paola Employees Stock Ownership Plan,* Paola, Kansas; to acquire 100 percent of the voting shares of Iola Bancshares, Inc., Iola, Kansas, and thereby indirectly acquire Iola Bank and Trust Company, Iola, Kansas.

2. *TeamBanc, Inc,* Paola, Kansas; to merge with Iola Bancshares, Inc., Iola, Kansas, and thereby indirectly acquire Iola Bank and Trust Company, Iola, Kansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American Capital Corporation,* Centerville, Texas; to acquire 100 percent of the voting shares of Guaranty Bond State Bank of Waller, Waller, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Hawaiian, Inc.,* Honolulu, Hawaii, to acquire 100 percent of the voting shares of First Interstate of Hawaii, Inc., Honolulu, Hawaii, and thereby indirectly acquire First Interstate Bank of Hawaii, Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, April 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–10036 Filed 4–30–90; 8:45 am]

BILLING CODE 6210–01–M

KSAD, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 21, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *KSAD, Inc.,* Council Bluffs, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–10037 Filed 4–30–90; 8:45 am]

BILLING CODE 6210–01–M

Fred S. Neumann; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fred S. Neumann,* Dallas, Texas; to acquire 3.16 percent of the voting shares of Southeast Bancshares, Inc., Dallas, Texas, and thereby indirectly acquire Commercial National Bank, Dallas, Texas.

Board of Governors of the Federal Reserve System, April 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–10038 Filed 4–30–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Suspension Lifted; Laboratory Again Meets Minimum Standards To Engage in Urine Drug Testing for Federal Agencies; Laboratory Specialists, Inc.

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal Agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for Federal agencies was suspended on January 24, 1990 (55 FR 3107, January 30, 1990) and was reinstated effective April 26, 1990: Laboratory Specialists Inc., 113 Jarrell Drive, Belle Chase, LA 70037, 504–392–7961.

FOR FURTHER INFORMATION CONTACT: Drug Testing Section, Division of Applied Research (formerly the Office of Workplace Initiatives), National Institute on Drug Abuse, Room 9–A–53, 5600 Fishers Lane, Rockville, Maryland 20857.

Submitted for publication in the **Federal Register** on April 30, 1990.

Richard A. Millstein,

Deputy Director, National Institute on Drug Abuse.

[FR Doc. 90–10179 Filed 4–27–90; 12:53 pm]

BILLING CODE 4160–20–M

Centers for Disease Control

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), Research Strategy Development for Preventing Tractor-Related Fatalities; Meeting

Name: Research Strategy Development for Preventing Tractor-Related Fataltities.

Time and date: 9 a.m.–3:30 p.m., June 5, 1990.

Place: Holiday Inn, 1400 Saratoga Avenue, Morgantown, West Virginia, 26505.

Status: Open to the public, limited only by the space available.

Purpose: To conduct a workshop to develop a national research strategy for reducing the rate of farm tractor-related fatalities, particularly those involving rollovers.

Contact person for additional information: John R. Etherton, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, S–109, Morgantown, West Virginia 26505–2888, telephone (304) 291–4809 or FTS 923–4809.

Dated: April 20, 1990.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 89–10047 Filed 4–30–89; 8:45 am]

BILLING CODE 4160–10–M

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Dermatologic Drugs Advisory Committee

Date, time, and place. May 21, 1990, 8 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Closed presentation of data, 8 a.m. to 10 a.m.; open public hearing, 10 a.m. to 11 a.m., unless public participation does not last that long; open committee discussion, 11 a.m. to 4:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the treatment of dermatologic diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 7, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to a pending new drug application (NDA). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Open committee discussion. The committee will discuss NDA 18–662 (Accutane capsules).

Arthritis Advisory Committee

Date, time, and place. May 24 and 25, 1990, 8:30 a.m., Conference rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, May 24, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; closed presentation of data and closed committee deliberations, 9:30 a.m. to 4:30 p.m.; closed presentation of data and closed committee deliberations, May 25, 1990, 8:30 a.m. to 4 p.m.; David F. Hersey, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before May 10, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed presentation of data. The committee will hear the trade secret and/or confidential commercial information relevant to pending investigational new drug applications (IND's). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing , prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contract person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact peson before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday Summary mintues of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files complied for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA critieria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: April 22, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90–10031 Filed 4–30–90; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Privacy Act of 1974; Systems of Records

AGENCY: The Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of proposed new routine use for an existing system of records.

SUMMARY: HCFA is proposing to add a new routine use to the "Medicare Physician Supplier Master File," HHS/HFCA/BPO, No. 09–70–0516, to permit the release of the Unique Physician Identification Number (UPIN) to entities that bill for services they performed upon order or referral from a physician.

EFFECTIVE DATES: The proposed new routine use shall take effect without further notice July 2, 1990, unless comments received on or before that date would warrant change.

HCFA filed an altered system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Acting Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on April 20, 1990. Because we are altering the system in addition to adding a new routine use, we have prepared a report of altered system of records under 5 U.S.C. 552a(o).

ADDRESSES: Please address comments to: Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, G–M–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. We will make comments received available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Jean A. Harris, Director, Division of Carrier Procedures, Office of Program

Operations Procedures, Bureau of Program Operations, Health Care Financing Administration, G–A–7 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone Number (301) 966–6968.

SUPPLEMENTARY INFORMATION: In 1988, HCFA established a new system of records, under the authority of section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99–272) (42 U.S.C. section 1395ww (note)), to maintain a UPIN of each physician for which payment may be made under Medicare. Notice of this system, the "Medicare Physician Identification and Eligibility System, (MPIES)," HHS/HCFA/BPO, No. 09–70–0525, was most recently published at 54 FR 28119; July 5, 1989.

Regulations at 42 CFR 421.200 require carriers to implement methods and procedures for identifying utilization patterns that deviate from professionally established norms, both in the performance of services and in the referral of patients for other services or ordering of other services or supplies.

To acomplish this, HCFA proposes to add the UPIN to the "Medicare Physician/Supplier Master File," and a new routine use. This new routine use is needed because physicians create Medicare outlays not just when furnishing services, but also when ordering a service or making a referral. Therefore, Form HCFA–1500 will require the UPIN of referring and/or ordering physicians. The new routine use will permit the release of the UPIN to physicians and others who perform a service ordered or referred by a physician.

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose which is compatible with the purposes for which the information was collected. We disclose information for routine uses when it is necessary to carry out our programs. We may also disclose information to other Federal, State or local or private agencies or individuals for purposes that we are compatible with the purposes of our programs when the benefit of the proposed use outweighs the effect, or risk of any effect, on the privacy of individuals.

To comply with the technical requirements of the Privacy Act, we are proposing to add the routine use below to previously published uses (1) through (5):

(6) To certain third parties, e.g., physicians, suppliers, third party billers, laboratories, and providers, for purposes of allowing them to submit complete claims to Medicare including the UPIN of the physician who ordered the service or referred the patient, if HCFA:

a. Determines that the party has a claim involving the physician;

b. Limits the disclosure to the minimal segment of information necessary to effect the program purpose for which disclosure was authorized;

c. Requires that recipient of the information to make no further use or disclosure of the record.

The following changes are being made to the system in addition to the new routine use:

- Section—*System Name:* Change to read: "Medicare Physician/Supplier Master File," HHS/HCFA/BPO, No. 09–70–0516.
- Section—*Categories Of Records In The System:* Change to read: "A compilation of data designed to identify physicians, suppliers, and other health care practitioners (name, UPIN, practice location, and specialty); historical charge data on which customary and prevailing charges are based; and other data needed for computing Medicare payment amounts."
- Section—*Storage:* Add "disk" between "magnetic tape" and "microfilm."
- Section—*Retrievability:* Change to read: "The records are retrieved by UPIN; by the practitioner's/supplier's Employer Identification Number or other tax reporting number; and by the locally assigned billing number."
- Section—*Safeguards:* After the first sentence, add the following sentence: "However, the UPIN is releasable to physicians, suppliers, third party billers, laboratories, and providers billing Medicare to insure that the UPIN is included on Medicare claim forms and billings to identify referring and/or ordering physicians."
- Section—*Retention And Disposal:* Add "Submitted charge" before "Records are—." Change "calendar" to "fee screen."
- Section—*Record Source Categories:* add "and from the 'medicare Physician Identification and Eligibility System, (MPIES),' HHS/HCFA/BPO, No. 09–70–0525."

This new routine use is consistent with the Privacy Act, 5 U.S.C. 552(a)(7), since, as previously noted, it is compatible with the purpose for which the information is collected.

In addition to the above, we are taking this opportunity to make editorial changes and other administrative revisions which have occurred since the last publication of the system. Therefore, the entire notice is published below for the convenience of the reader.

Dated: April 18, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09–70–0516

System name:

Medicare Physician/Supplier Master File HHS/HCFA/BPO

Security classification:

None.

System location:

Carriers under contract to the Health Care Financing Administration and the Social Security Administration. (See Appendix C, Section 4.)

Categories of individuals covered by the system:

Physicians and suppliers who provide medical services or supplies to Medicare beneficiaries.

Categories of records in the system:

A compilation of data designed to identify physicians, suppliers, and other health care practitioners (name, UNPIN, practice location, and specialty); historical charge data on which customary and prevailing charges are based; and other data needed for computing Medicare payment amounts.

Authority for maintenance of the system:

Sections 1833, 1835, 1842 and 1874 of Title XVIII of the Social Security Act (42 U.S.C. 1395l, 1395n, 1395u, and 1395kk).

Purpose(s):

To determine health care reasonable charges and the geographical area prevailing charges.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records from this system may be disclosed (1) to a provider, the claimant or a prospective claimant, the name of a physician who has been found ineligible to submit claims under Section 1814(h) (Payment for Posthospital Extended Care Services) or Section 1814(i) (Payment for Posthospital Home Health Services) to Title XVIII of the Social Security Act. (2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (3) Disclosure may be made to the Title XIX State agency or the Title XIX fiscal agents of the customary and prevailing charge screens and whatever other information is contained in the file and

would be required to determine "reasonable charges" as required under section 103(i)(1) of the Social Security Act. (4) To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

(5) To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system for developing, modifying and/or manipulating ADP software. Data would also be dislcosed to contractors incidential to consultation, programming, operation, user assistance, or maintenance for an ADP or telecommunications system containing or supporting records in the system.

(6) To certain third parties, e.g., physicians, suppliers, third party billers, laboratories, and providers, for purposes of allowing them to submit complete claims to Medicare including the UPIN of the physician who ordered the service or referred the patient, if HCFA:

a. Determines that the party has a claim involving the physician;

b. Limits the disclosure to the minimal segment of information necessary to effect the program purpose for which disclosure was authorized;

c. Requires the recipient of the information to make no further use or disclosure of the record.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Records are maintained on magnetic tape, copy paper, disk, microfilm, and hard copy paper.

Retrievability:

The records are retrieved by UPIN; by the practioner's/supplier's Employer Identification Number or other tax reporting number; and by the locally assigned billing number.

Safeguards:

Disclosure of records is limited to carrier personnel on a need-to-know basis. However, the UPIN is releasable to physicians, suppliers, third party billers, laboratories, and providers billing Medicare to ensure that the UPIN is included on Medicare claim forms and billings to identify the referring and/or ordering physicians.

The files are closed to unauthorized personnel. The determination as to which personnel are auhtorized will vary slightly in different carrier installations. All carriers have guards at the building entrance to prevant intrusion by individuals not employees or not having business with the carrier. One or more of the following security measures are used within the building: Color coded identification cards are used to establish the right of an employee to be in a specific area; cipher locks are used to protect files and computer areas; magnetic identification cards are used to gain access to security sensitive areas; video monitoring of sensitive areas is constant.

Retention and disposal:

Submitted charge records are closed out the first quarter following the close of the previous fee screen year. Files are retained indefinitely.

System manager(s) and address:

Health Care Financing Administration, Bureau of Program Operation, Director, Division of Carrier Procedures, 6325 Security Boulevard, Baltimore, Maryland 21207.

Notification procedure:

Inquiries and requests for records information should be directed to the carrier servicing the physician's or supplier's geographical area. Individuals who want to determine if they have a record in this system must provide their full name and address.

Record access procedures:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. (These access procedures are in accordance with Department regulations (45 CFR 5b.5(a)(2).)

Contesting record procedures:

Contact the Systems Manager at the address specified above and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department Regulations, 45 CFR 5b.7.)

Record source categories:

Information contained in these records is furnished in part by the individual physicians or supplier and in part abstracted from Medicare Part B billing records and from the "Medicare Physician Identification and Eligibility System (MPIES)", HHS/HCFA/BPO, No. 09–70–0525.

Systems exempted from certain provisions of the Act:

None.

[FR Doc. 90–10002 Filed 4–30–90; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

Program Announcement for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for Fiscal Year 1991 for Grants for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), title VII, of the Public Health Service Act, Health Professions Reauthorization Act of 1988, (title VI), Pub. L. 100–607.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

The Administration's budget request for Fiscal Year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q.

Change in Project Requirement

A final rule was published in the Federal Register of December 6, 1989 (54 FR 50373) which states that there has been one change in the project requirements since Fiscal Year 1990. The maximum length of stipend support for trainees has been extended from one calendar year to 24 cumulative months.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project provides for the project requirements;

(2) The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

(3) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

(1) Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

(2) Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

(3) Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Funding Priorities for Fiscal Year 1991

The following funding priorities were established in Fiscal Year 1989 after public comment and the Administration is extending these priorities again in Fiscal Year 1991.

In determining the order of funding of approved applications, a funding priority will be given to:

(1) Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic, and American Indian/Alaskan Native minority trainees).

(2) Applications designed to develop faculty competence for teaching ambulatory and inpatient case management of those with HIV infection-related diseases.

(3) Applications designed to develop faculty competence for teachig quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(4) Applications designed to develop faculty competence for teaching geriatric content and/or develop educational materials for teaching geriatric content to medical students, residents and practitioners.

Special Consideration

Special consideration will be given to applications demonstrating a commitment to family medicine.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The deadline date for receipt of applications is June 25, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D–15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857; Telephone: (301) 443–6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

The standard application from PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Should additional programmatic information be required please contact:

Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04, Rockville, Maryland 20857; Telephone: (301) 443–3614.

This program is listed at 13.895 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: March 22, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–9986 Filed 4–30–90; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement for Grants for Faculty Development in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration (HRSA) announces that applications for Fiscal Year 1991 Grants for Faculty Development in General Internal Medicine and General Pediatrics are being accepted under the authority of section 784 of the Public Health Service Act.

The Administration's budget request for Fiscal Year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 784 of the Public Health Service Act authorizes Federal assistance to schools of medicine and osteopathic medicine, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general

internal medicine or general pediatrics training programs. These grants also provide financial assistance in meeting the cost of supporting physicians who are trainees in such programs.

In addition, section 784 authorizes the award of grants to support general internal medicine or general pediatrics residency training programs. A separate grant program exists for this purpose.

To receive support, applicants must meet the requirements of final regulations as specified in 42 CFR part 57, subpart FF.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degreee to which the applicant demonstrates a commitment to general internal medicine or general pediatrics;

(2) The degree to which the proposed project adequately provides for the project requirements;

(3) the administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(4) The qualifications of the proposed staff and faculty; and

(5) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specified category or group of approved applications ahead of other categories or groups of applications, such as completing continuation ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The following funding priorities were established in Fiscal Year 1990 after public comment and the Administration is extending these priorities in FY 1991.

Funding Priorities for Fiscal Year 1991

In determing the order of funding of approved applications, a funding priority will be given to the following:

1. Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native minority trainees).

2. Applications designed to develop faculty competence for teaching ambulatory and inpatient case management of those with HIV infection-related diseases.

3. Applications designed to develop faculty competence for teaching quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

Special Consideration

Special consideration will be given to applicants demonstrating a commitment to general internal medicine or general pediatrics.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D–28), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857; Telephone: (301) 443–6960.

Application materials should be mailed to the Grants Management Officer at the above address.

Questions regarding programmatic information should be directed to:

Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04, Rockville, Maryland 20857; Telephone: (301) 443–3614.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785, and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application date will be approximately six months from the first deadline.

The application deadline date is June 25, 1990. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.900 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372 Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: March 22, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–9987 Filed 4–30–90; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement for Grants for Graduate Training in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for Fiscal Year 1991 Grants for Graduate Training in Family Medicine are being accepted under the authority of section 786(a), title VII, of the Public Health Service Act, extended by the Health Professions Reauthorization Act of 1988, Pub. L. (100–607) title VI.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The Administration's budget request for Fiscal Year 1991 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 786(a) of the Public Health Service Act authorizes the Secretary to

award grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine or other public or private nonprofit entities to assist in meeting the costs of planning, developing and operating or participating in approved graduate training programs in the field of family medicine. In addition, section 786(a) authorizes assistance in meeting the cost of supporting trainees in such programs who plan to specialize or work in the practice of family medicine. To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project provides for the project requirements;
2. The administration and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
3. The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications:

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.
2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Funding Priorities for Fiscal Year 1991

The following funding priorities were established in FY 1989 after public comment and the Administration is again extending these priorities in Fiscal Year 1991.

In determining the order of funding of approved applications a funding priority will be given to:

(1) Projects which satisfactorily demonstrate an enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native) over the average of the past three years in postgraduate year (PGY) trainees.

(2) Projects in which substantial training experience in one or more of the following: A PHS 332 health manpower shortage area, PHS 329 migrant health center, PHS 330 community health center, PHS 781 funded Area Health Education Center, or State designated clinic/center serving an underserved population.

(3) Applications that demonstrate sufficient curricular time and offering devoted to assuring competence in the prevention, recognition and treatment of those with HIV infection-related diseases.

(4) Applications that demonstrate curricular time and offering devoted to assuring competence in quality assurance/risk management activities: monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(5) Applications proposing to provide substantial multidisciplinary geriatric training experiences in multiple settings and inpatient and extended care facilities.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D–15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–26, Rockville, Maryland 20857; Telephone: (301) 443–6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact:

Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–04, Rockville, Maryland 20857; Telephone: (301) 443–6820.

The standard application form PHS 6025–1, HRSA Competing Training Grant Applications, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is July 6, 1990. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to the independent review group. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

This program is listed at 13.379 in the Catalog of Federal Domestic Assisatnce. It is not subject to the provisions of Executive Order 12372, Intergovenmental Review of Federal Programs (as implemented through 45 part 100).

Dated: March 22, 1990.

Robert G. Harmon,

Administrator.

[FR Doc. 90–9985 Filed 4–30–90; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Alcohol, Drug Abuse, and Mental Health Administration; Statement of Organization, Functions, and Delegations of Authority

Part, H, chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (39 FR 1654, January 11, 1974, as amended most recently by 55 FR 1097, January 11, 1990) is amended to establish division level components within the Office for Substance Abuse Prevention (OSAP), ADAMHA.

Section HM–B, Organization and Functions, Alcohol, Drug Abuse, and Mental Health Administration (HM), is amended as follows:

After the statement for the Office for Substance Abuse Prevention (HMP) insert the following:

Office of Budget, Planning, and Evaluation (HMPA): (1) Develops and coordinates plans for new policies and programs and monitors and evaluates progress toward established objectives; (2) develops and prepares position papers on policy and programs; (3) reviews executive, congressional, and departmental policy and regulations to determine their impact on existing or planned OSAP programs (included is a complete review of all policy and guidance releases of the Office of National Drug Control Policy (ONDCP) for relevance to OSAP); (4) prepares annual forward plans in conjuction with the Department's planning process and develops recommendations for future activities; (5) formulates and coordinates the planning of budget and position allowances, including the preparation for and assistance

participation in executive and congressional hearings; (6) establishes accounting procedures for and monitors the execution of the OSAP budget; (7) maintains liaison with the ONDCP, congressional committees, other ADAMHA organizations, the Office of the Assistant Secretary for Health, Office of the Secretary, other governmental components, and alcohol and other drug abuse prevention special interest groups; (8) coordinates responses to legislative proposals and congressional inquiries and develops reports to Congress; (9) collects and evaluates information concerning the effectiveness of OSAP activities and recommends modifications in terms of policy and legislation; (10) conducts broad-based drug abuse prevention and evaluation studies including Federal, State, local, and private efforts; and (11) administers support and program assistance programs of a crosscutting nature.

Office of Program Coordination and Review (HMPB): (1) Provides leadership and advises the Director in developing, implementing, and coordinating grant programs and policies; (2) plans, administers, and coordinates peer and objective review of grant applications and contract proposals; (3) develops and provided guidance on OSAP review policies and procedures and monitors the grants review process to ensure quality of review and conformance to policy; (4) recommends nominees for review groups and provides orientation and guidance to assure compliance with policy in conducting such reviews; (5) provides committee management support to the OSAP Advisory Committee and initial review committees; (6) collects and analyzes data relating to the review of grant applications and contract proposals; (7) coordinates with programmatic components of OSAP to assure announcements are in compliance with policy and provides guidance for clearance through ADAMHA and OHB channels; (8) assists in presentation and interpretation of review results to the OSAP Advisory Committee and review groups; and (9) participates in the review of proposed DHHS, PHS, and ADAMHA policies and documents that may effect the peer and objective review procedures.

Office of Administrative Management (HMPC): (1) Provides or coordinates the provision of administrative management support to OSAP is such areas as: (a) Administrative services, (b) personnel management, (c) position utilization, and (d) grants and contracts management; (2) administers information resources management programs, including establishing policy, implementing regulations, providing technological services, and coordinating with other organizations; (3) develops administrative management policies, procedures, and guidelines and conducts management studies of OSAP programs and operations; and (4) maintains liaison with the management staff of the Office of the Administrator, ADAMHA, and implements general management policies within OSAP as prescribed by ADAMHA and higher authorities.

Division of Communication Programs (HMPD): (1) Provides leadership in the development, coordination, implementation, and evaluation of knowledge transfer activities; (2) develops and disseminates information about alcohol and other drugs; (3) assesses the needs for and promotes the development and widespread use of prevention/intervention-related messages and materials by key organizations and constituencies, especially directed towards hard to reach audiences and those at high risk; (4) develops and coordinates media campaigns and stimulates media coverage of alcohol and other drug issues with emphasis on prevention; (5) prepares and acquires materials based on available scientific and programmatic information and need by key target audiences; (6) manages the National Clearinghouse for Alcohol and Drug Information and provides access to information and materials in the clearinghouse; (7) establishes a proactive involvement with media and related organizations; (8) promotes and provides assistance for increased capacity of State agencies and key constituent organizations to carry out knowledge development and dissemination activities; (9) sponsors and conducts workshops, conferences and related efforts to foster state-of-the-art knowledge transfer activities; (10) develops, implements and evaluates an extramural cooperative agreement program to demonstrate effective communication approaches to the reduction of alcohol and other drug problems; and (11) provides leadership and a coordinating point for selected projects relating to public communications.

Division of Community Prevention and Training (HMPE): (1) Develops and implements comprehensive, long-term community drug and alcohol abuse prevention/intervention strategies, programs, and service support activities; (2) administers community demonstration grant programs to support coalitions in the building of long-term strategies; (3) administers a national training program for alcohol and other drug abuse counselors, social workers, and health professionals as well as community, national, and State leaders and organizations; (4) provides technical assistance, training, materials development, and program development and assists organizations, agencies, and individuals at the Federal, State, and local levels; (5) evaluates programs administered within the Division; and (6) promotes interagency coordination with Federal, State, and local agencies to ensure maximum utilization of fiscal and manpower resources and needed program development in neglected prevention/intervention areas.

Division of Demonstrations and Evaluation (HMPF): (1) Supports targeted demonstration, evaluation, and service projects in the prevention, treatment, and rehabilitation of those who abuse alcohol and other drugs, including youth at high risk of such abuse and women of childbearing age; (2) disseminates to the field new knowledge and effective strategies learned from the demonstration projects; (3) evaluates Division demonstration programs for the prevention, treatment, and rehabilitation of alcohol and other drug abuse among high risk youth, pregnant and postpartum women and their infants; (4) manages a national learning community including researchers, representatives of State and Federal agencies, and representatives from professional organizations for the systematic exchange of information and strategies among grantees and other groups involved in the prevention of alcohol and other drug abuse among high risk youth, pregnant women, and related programs; (5) coordinates with other Federal agencies, such as the Department of Education, to implement common objectives; (6) provides technical assistance to grantees and other supporters working with client groups to enhance quality of programs and ability to evaluate them; and (7) manages a national resources center for pregnant and postpartum women and their infants for issues related to drug abuse.

Dated: April 24, 1990.

Frederick K. Goodwin,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-9984 Filed 4-30-90; 8:45 am]

BILLING CODE 4160-20-M

Public Health Service National Toxicology Program

National Toxicology Program; Announcement of Intent To Conduct Long-term Toxicological Studies of Two Chemicals; Request for Comments

As part of an effort to inform the public, the National Toxicology Program (NTP) routinely announces in the **Federal Register** the lists of chemicals for which it intends to conduct long-term toxicological studies. This announcement will allow interested parties to comment and provide information on chemicals under consideration for long-term toxicology and carcinogenesis studies.

1. Carisoprodol (78–44–4)—chronic studies via gavage in B6C3F1 mice and F344 rats.

2. Isobutene (115–11–7)—subchronic and chronic studies via inhalation in B6C3F1 mice and F344 rats.

Anyone having relevant information (including ongoing toxicological studies, current or future trends in production and import, use pattern, human exposure levels, and toxicological data) to share with the NTP on any of these chemicals, should contact Dr. William Eastin or Ms. Janet Guthrie within 60 days of the appearance of this announcement. The information provided will be considered by the NTP in designing these studies.

Contact may be made by mail to: NIEHS/NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709 or by telephone at 919–541–7941 (Dr. William Eastin) or 919–541–2245 (Ms. Janet Guthrie).

Dated: April 24, 1990.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 90–10097 Filed 4–30–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

San Joaquin Valley Drainage Program, CA; Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Citizens Advisory Committee for the San Joaquin Valley Drainage Program will meet on Wednesday, May 30, 1990, at the Plum Tree Plaza Inn, 111 East March Lane, Stockton, California, at 10 a.m.

The meeting is open to the public. Persons wishing to address the Committee will be allowed five minutes to present their statement.

The facilities and rooms where the meeting will be held are accessible to the handicapped. Hearing-impaired, visual-impaired, or mobility-impaired persons planning to attend may arrange for special assistance by calling Curtis Smith at 916–978–4911.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda for the meeting may be acquired from: Edgar A. Imhoff, Program Manager, San Joaquin Valley Drainage Program, 2800 Cottage Way, Room W–2143, Sacramento, California 95825–1898, Phone: 916–978–4983 (FTS 460–4983). Telephone inquiries may also be made to Carroll Hamon or Robert Horton at 916–978–4982 (FTS 460–4982).

SUPPLEMENTARY INFORMATION: This notice is provided in accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended to December 12, 1980.

Dated: April 23, 1990.

Edgar A. Imhoff,

Program Manager, San Joaquin Valley Drainage Program.

[FR Doc. 90–10030 Filed 4–30–90; 8:45 am]

BILLING CODE 4310–09–M

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1706–0004), Washington, DC 20503, telephone (202) 395–7340.

Title: 25 CFR, part 125, Payment of Sioux Benefits.

OMB Approval Number: 1076–0004.

Abstract: Prescribes the eligibility criteria and application procedure governing payment of "Sioux Benefits" under the 1889 Sioux Allotment Act, as amended, the 1928 Sioux Benefits Act: and section 14 of the 1934 Indian Reorganization Act (25 U.S.C. 474). The data on this form is used by the BIA to determine the applicant's eligibility for Sioux Benefits.

Note: This is not a new program or a new information collection by BIA.

Bureau form number: BIA–4210.

Frequency: Nonrecurring.

Description of Respondent: Eligible Cheyenne River Sioux Indians of the Cheyenne River Reservation, South Dakota.

Estimated completion time: 30 minutes.

Annual responses: 260.

Annual burden hours: 130.

Bureau clearance officer: Gail Sheridan (202) 343–3577.

Dated: March 23, 1990.

Walter R. Mills

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 89–9993 Filed 4–30–89; 8:45 am]

BILLING CODE 4310–02–M

Environmental Impact Statement (EIS) for Proposed Lease on the Moapa River Indian Reservation, Clark County, Nevada

AGENCY: Department of the Interior: Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM).

ACTION: Notice of intent and public scoping meetings.

SUMMARY: This notice advises the public that the Department of the Interior, Bureau of Indian Affairs and Bureau of Land Management, in cooperation with the Moapa Band of Paiutes, intends to gather information necessary for the preparation of an EIS for the proposal to lease approximately 326 acres of Indian trust lands located on the Moapa River Indian Reservation, Clark County, Nevada, and to obtain a right-of-way transmission line easement of 698 acres (encompassing 28.8 miles in length and 200 ft in width) on public lands, also located in Clark County, Nevada, from the Bureau of Land Management. This land will be utilized as follows:

1. Generation Plant Site: 142 acres
   (a) generation plant—34 acres
   (b) CO_2 and related facilities—10 acres
   (c) evaporation ponds—10 acres
   (d) non-use area—38 acres
2. Railroad Terminal Site: 67 acres
   (a) propane storage & handling area—10 acres
   (b) fuel oil storage & handing area—10 acres
   (c) liquid CO_2 terminal—5 acres
   (d) non-use area—42 acres
3. Roadway: 21 acres
   (a) connecting road between plant site and railroad terminal—21 acres
4. Water Line Easement: 96 acres
   (a) easement dimensions are 15.9

miles in length and 50 feet in width—96 acres

5. Transmission Line Utility easement: 698 acres

(a) easement dimensions are 28.8 miles in length and 200 feet in width (from the plant generation site to the Pecos Substation).

The proposed lease site will be considered for a 400 megawatt cogeneration facility that will employ gas-fired turbines to produce electricity and liquid carbon dioxide. Public scoping meetings will be held to solicit suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. This notice is required by the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7).

DATES: Written comments should be received on or before June 18, 1990. The scoping meetings will be held to identify issues and alternatives to be evaluated in the EIS documentation. The dates and locations for the scoping meetings are as follows: May 16, 1990, 7 p.m., Tribal Office, Moapa River Indian Reservation, Moapa, Nevada; and May 17, 1990, 1 p.m. and 6:30 p.m., McCarran Airport—Clark County Aviation Department Training Rooms A & B (5th Floor), 5757 Wayne Newton Boulevard, Las Vegas, Nevada.

Comments and participation in the scoping process are solicited and should be directed to the BIA at the address below or to Sierra Delta Corporation, Attention: Cheryl McDonnell-Canan, 3281 S. Highland Dr., Suite 805, Las Vegas, Nevada, 89109. Significant issues to be covered during the scoping process will include biotic resources; archaeological, cultural, and historic sites; socioeconomic conditions; land use; air, visual, water quality and resource patterns.

ADDRESSES: Comments should be addressed to Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001, or to Sierra Delta Corporation at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Esplin, Southern Paiute Field Office, P.O. Box 986, Cedar City, Utah 84720. Telephone (801) 586–1121.

This notice is published pursuant to Sec. 1501.7 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 437 *et seq.*) Department of the Interior Manual (516 DM I–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 26, 1990.

Walter R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90–10107 Filed 4–30–90; 8:45 am]

BILLING CODE 4210–02–M

Bureau of Land Management

[Doc. Nos. AK–966–4230–15; AA–6691–A2]

Alaska Native Claims Selection; Oceanside Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Oceanside Corporation for 150.60 acres. The lands involved are in the vicinity of Perryville, Alaska in T. 49 S., R. 62 W. and T. 50 S., R. 64 W., Seward Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, No. 13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until May 31, 1990 to file an appeal. However parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Mary Jane Clawson,

Chief, Branch of Southwest Adjudication.

[FR Doc. 90–10029 Filed 4–30–90; 8:45 am]

BILLING CODE 4310–JA–M

[UT–940–00–4212–11; U–53874]

Termination of State Indemnity Selection Classifications; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates State Indemnity Selection Classification affecting 3,520 acres in San Juan County, Utah. The State of Utah withdrew its indemnity selection application. This action will open 3,520 acres to the public land laws and to the United States mining laws. The land has been and will rfemain open to mineral leasing.

EFFECTIVE DATE: May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Mike Barnes, BLM Utah State Office, 324 South State Street, suite 301, Salt Lake City, Utah 84111–2303, (801) 539–4119.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior pursuant to sections 2275 and 2276 of the Revised Statutes as amended; 43 U.S.C. 851, 852, it is ordered as follows:

1. Pursuant to 43 CFR 2091.7–1(b)(1) and the authority delegated to me by BLM Manual section 1203 (48 FR 85), classification decision U–53874 dated March 24, 1985, which classified 3,520 acres of public land as suitable for State Indemnity Selection is hereby revoked insofar as it affects the following described lands:

Salt Lake Meridian

T. 37 S., R. 18 E.,
Sec. 10, S½NW¼, SW¼, S½SE¼
Sec. 11–15, all.

The area described contains 3,520 acres located in San Juan County.

2. At 7:45 a.m., on May 31, 1990, the lands in paragraph 1, shall be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawls, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m., shall be considered as simultaneously filed at the time. Those received thereafter shall be considered in the order of filing.

3. At 7:45 a.m. on May 31, 1990, the land described in paragraph 1 will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since

Congress has provided for such determination in local courts.

James M. Parker,

State Director.

[FR Doc. 90-10040 Filed 4-30-90; 8:45 am]

BILLING CODE 4310-DQ-M

[OR-943-00-4130-12; GPO-210; OR-45225(WASH)]

Termination of Proposed Withdrawal and Reservation of Lands; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Agriculture, Forest Service, has cancelled its application to withdraw certain lands to protect portions of the North Cascades Scenic Highway Zone. The lands are within an existing withdrawal and will not be opened to mining. The lands have been and remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: Notice of Department of Agriculture, Forest Service application OR-45225(WASH) for withdrawal and reservation of lands was published as FR Doc. 89-17342 on page 30954 dated July 25, 1989. The purpose of the proposed withdrawal was to protect portions of the scenic zone located adjacent to the North Cascades Scenic Highway (State Highway 20). The applicant agency has determined that the proposed withdrawal is no longer needed and has cancelled the application in its entirety which includes the following described lands:

Willamette Meridian

Mt. Baker, Okanogan, and Wenatchee National Forests

A strip of land of varying widths of from 200 to 2,000 feet on each side of and running paralled and concentric with the monumented centerline of State Highway 20 through the following described townships and sections as more particularly identified and described in the official records of the Bureau of Land Management, Oregon State Office, and excepting any portions thereof that lie within the existing withdrawals made by Public Land Order No. 3794 dated August 17, 1965, Public Land Order No. 3380 dated April 8, 1964, and Public Land Order No. 4555 dated November 18, 1968:

T. 37 N., R.14 E., unsurveyed,
Sec. 10, 11, 12, and 13.
T. 36 N., R.16 E., unsurveyed,
Secs. 3, 4, 10, 11, 14, 15, 23, 24, 25, and 36.
T. 37 N., R.16 E., unsurveyed,
Secs. 17, 20, 21, 28, 29, 33, and 34.
T. 35 N., R.17 E., unsurveyed,
Secs. 5, 6, 7, 8, 13, 16, 17, 21 to 28, inclusive, and 35.
T. 36 N., R.17 E., unsurveyed,
Sec. 31.
T. 35 N., R.18 E., unsurveyed,
Secs. 5, 8, 17, 18, 19, and 20.
T. 36 N., R.18 E., unsurveyed,
Secs. 21 to 29, inclusive, 32, and 33.
T. 36 N., R.19 E., unsurveyed,
Secs. 19, 20, 22, 27, 28, 29, 30, 32, and 33.

The areas described aggregate, after making the above-mentioned exceptions, approximately 2,900 acres in Chelan, Okanogan, Skagit, and Whatcom Counties, Washington.

The above described lands lie within the protective withdrawal made by Public Land Order No. 6776 dated April 5, 1990, and will not be opened to location and entry under the mining laws.

Dated: April 19, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-10075 Filed 4-30-90; 8:45 am]

BILLING CODE 4310-33-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 21, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by May 16, 1990.

Carol D. Shull,

Chief of Registration, National Register.

IOWA

Clayton County

Turkey River State Preserve Archeological District (Prehistoric Mounds of the Quad-State Region of the Upper Mississippi River Valley MPS), Address Restricted, Millville vicinity, 90000774

KANSAS

Wyandotte County

Hanover Heights Neighborhood Historic District, Roughly bounded by Olathe Blvd., Frances St., 43rd Ave., and State Line Rd., Kansas City, 90000776

KENTUCKY

Fulton County

Buchanan Street Historic District (Hickman, Kentucky MPS), Roughly bounded by Wellington, Obion, Buchanan, and Union Sts., Hickman, 90000779

Carnegie Library (Hickman, Kentucky MPS), Moscow Ave. between Troy Ave. and Third St., Hickman, 90000780

Old Hickman Historic District (Hickman, Kentucky MPS), Roughly bounded by Clinton, Exchange, Obion, Moulton, and Kentucky Sts., Hickman, 90000778

Jefferson County

Diamond Fruit Farm (Boundary Increase) (Jefferson County MRA), 8101 Six Mile Ln., Jeffersontown vicinity, 90000783

Lyndon Cottage (Louisville and Jefferson County MPS), Terminus of Hurstbourne Country Club Dr., Louisville vicinity, 90000781

LOUISIANA

St. John The Baptist Parish

Bacas House, SR 18 E of Evergreen Plantation, Edgard vicinity, 90000786

MASSACHUSETTS

Barnstable County

South Varmouth/Bass River Historic District, Roughly Main St. from Pine to South St., River St. from Main to Bass R. Pkwy., and Willow St. from River to South St., Varmouth, 90000787

Bristol County

Lightship No. 114, State Pier, New Bedford, 90000777

Hampden County

Monson Center Historic District, Jct. of Main and Cushman Sts., Monson, 90000788

VERMONT

Chittenden County

Winooski River Bridge (Metal Truss, Masonry, and Concrete Bridges in Vermont MPS), SR 2 over the Winooski R., Richmond, 90000775

WASHINGTON

Clark County

Stanger, John, House, 9213 Evergreen Hwy., Vancouver vicinity, 90000785

Thurston County

Rochester Elementary School (Rural Public School Buildings in Washington State MPS), 10140 US 12 SW., Rochester vicinity, 90000784

WISCONSIN

Rock County

Old Fourth Ward Historic District, Roughly bounded by Washington St., Center Ave., Court St., Franklin St., and Monterey Park, Janesville, 90000789

West Milwaukee Street Historic District, Roughly bounded by Wall, River, Court, and Academy Sts., Janesville, 90000790

[FR Doc. 90-10106 Filed 4-30-90; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Flat Fork Watershed, Tennessee, Lands Unsuitable for Surface Mining and Reclamation Operations; Availability of Record of Decision and Statement of Reasons

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of availability of the record of decision and the statement of reasons on the petition to declare certain lands in Flat Fork Watershed, Tennessee unsuitable for surface coal mining.

SUMMARY: The Director of the Office of Surface Mining Reclamation and Enforcement (OSM) has reached a decision on a petition to designate an area as unsuitable for surface coal mining operations in the Flat Fork watershed, Morgan County, Tennessee.

ADDRESSES: Copies of the decision and the statement of reasons for the decision may be obtained from the Chief, Technical Services Division, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., room 5415–L, Washington, DC 20240, or Joe B. Maddox, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street SW., suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Joe B. Maddox, Office of Surface Mining Reclamation Enforcement, 530 Gay Street SW., suite 500, Knoxville, Tennessee 37902; telephone 615/673–4356.

SUPPLEMENTARY INFORMATION: Donald E. Todd, Mary Ann McPeters, William E. Armes, the Frozen Head State Park Association, Inc., the Tennessee Citizens for Wilderness Planning, and the Sierra Club filed a petition with OSM on September 27, 1985, to designate 5,250 acres of land lying in the Flat Fork Creek watershed, Morgan County, Tennessee, as unsuitable for all types of surface coal mining operations. Although the petition was filed in accordance with 30 CFR 942.764, evaluation of the document was delayed nearly three years as a result of legal appeals.

The petition was filed in accordance with section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing regulatiions at 30 CFR 942.764. The petition alleged: (1) That reclamation is not technologically and economically feasible; (2) that mining of the area would be incompatible with State and local land use plans or programs; (3) that mining could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems; (4) that mining could result in substantial loss or reduction of the water supply; and (5) that designation of the area would have little effect on the total supply of coal but a major detrimental effect on the environment. Pursuant to 30 CFR 942.764, OSM analyzed the allegations of the petition and, on November 16, 1989, held a public hearing. OSM filed the final petition evaluation document and environmental impact statement (PED/EIS) for the Flat Fork petition with the Environmental Protection Agency (EPA) on March 15, 1990. The EPA subsequently published the notice of availability for public comment on March 23, 1990 (55 FR 10804).

A copy of the decision signed by the Director appears as an appendix to this notice. Additional copies of the decision and copies of the statement of reasons (not attached to this notice) are available at no cost from the offices listed above under **"ADDRESSES."** OSM has sent copies of these documents to all interested parties of record.

Prior **Federal Register** notices on the Flat Fork unsuitability petition were, notice of intent to prepare an EIS published in the **Federal Register** on August 23, 1988 (53 FR 32715), and the notice of availability of the draft combined petition evaluation document/environmental impact statement published on October 19, 1989 (54 FR 42989).

Dated: March 26, 1990.

Brent Wahquist,

Assistant Director, Program Policy.

Appendix—Petition to Designate Certain Lands in the Flat Fork Watershed, Tennessee, as Unsuitable for Surface, Coal Mining Operations

Decision

Under section 522 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) the Office of Surface Mining Reclamation and Enforcement (OSM) has been petitioned by Donald E. Todd, Mary Ann McPeters, and William E. Armes, Wartburg, Tennessee; the Frozen Head State Park Association, Sunbright, Tennessee; Tennessee Citizens for Wilderness Planning, Oak Ridge, Tennessee; and the Sierra Club, San Francisco, California, to designate certain private lands in the Flat Fork watershed, Morgan County Tennessee, as unsuitable for all surface coal mining operations.

As required by sections 522(c) of SMCRA, public comments on the Flat Fork unsuitability petition were sought; a public hearing was held near the petition area in Wartburg, Tennessee; and a detailed petition evaluation document/environmental impact statement (PED/EIS) was prepared by OSM. The PED/EIS evaluated the petition, the potential coal resources of the area, the demand for coal resources, and the impacts of alternative petition decisions available to the decision maker on the entire range of resources elements in the social and physical environment.

I have considered the following information in the course of making this decision on the petition: the draft and final PED/EIS documents, the allegations of the petitioners, comments in the form of oral testimony at the public hearing, and written submissions received during the comment period (which ended December 11, 1989) from Federal agencies, State agencies, local agencies, and members of the public and industry. Other information considered in my decision included the Tennessee Department of Health and Environment public files from the previous decision that the State reached for the petition area. On the basis of all information that is in the record of this proceeding, I have reached the following decision:

Designate all parts of the petition area as unsuitable for surface coal mining operations while allowing the use of the existing haulage road through the petition area.

The existing haulroad commences off of the Flat Fork Road at approximately 2.6 miles east from the intersection with State Highway 62. The haulroad is about 2.2 miles in length and is constructed up the south face of Bird Mountain to cross over the mountain at Ross Gap. A "Statement of Reasons," which accompanies this decision, explains the basis for my conclusion to designate parts of the Flat Fork petition area as unsuitable for surface coal mining operations. However, this designation does not preclude the mining of coal from outside of the petition area by underground methods for coal reserves which underlie the petition area.

Copies of this decision will be sent to all parties in this proceeding. The decision will become effective on the date of the signing of the "Statement of Reasons." Any appeal from this decision must be filed within 60 days from that date in the United States District Court for the Eastern District of Tennessee, as required by SMCRA section 526(a)(1).

Harry M. Snyder,

Director, Office of Surface Mining Reclamation and Enforcement.

Dated: April 24, 1990.

[FR Doc. 90–10014 Filed 4–30–90; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31596]

Southeast Shortlines, Inc. D/B/A Thermal Belt Railway—Lease and Operation Exemption—line between Bostic and Forest City, NC; Exem

Southeast Shortlines, Inc., a noncarrier doing business as Thermal Belt Railway (Thermal), has filed a notice of exemption for the lease, operation, and possible future acquisition of 3.56 miles of rail line owned by CSX Transportation, Inc. (CSXT). The line extends between Bostic (milepost 403.84) and Forest City (milepost 407.40) in Rutherford County, NC.

This transaction is related to the purchase of the line by Rutherford Railroad Development Corporation (Rutherford). Rutherford has executed an agreement with CSXT for purchase of this line, and Rutherford will lease the line to Thermal. The transactions in this notice cannot be consummated until Rutherford acquires the line.[1]

Any comments must be filed with the Commission and served on John D. Heffner, Gerst, Heffner, Carpenter & Podgorsky, 1700 K Street, N.W., Suite 1107, Washington, D.C. 20006.

Applicant shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[2]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 13, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-10092 Filed 4-30-90; 8:45 am]

BILLING CODE 7035-01-M

[1] Thermal previously filed a notice of exemption to operate under lease and eventually purchase an abandoned connecting line owned by the Southern Railway System (Southern). Finance Docket No. 31484, *Southeast Shortlines, Inc., d/b/a Thermal Belt Railway—Lease, Operation and Acquisition Exemption—A line of Railroad in Rutherford County, NC* (not printed), served June 22, 1989. Southern was authorized to abandon the line in Docket No. AB-290 (Sub-No. 36), *Southern Railway—Carolina Division and Southern Railway Comany—Abandonment and Discontinuance of Service—In Cleveland and Rutherford Counties, NC* (not printed), served October 17, 1988. Rutherford and Thermal have not yet consummated the acquisition and operation of the Southern line. They plan to consummate the CSXT transaction here before consummating the Southern acquisition.

[2] Applicant certifies that it has filed the environmental notice required by 49 CFR 1105.11 and the historic preservation notice required by 49 CFR 1105.7(c)(10)(i)-(iii).

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on Civil Rules; Meeting

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Civil Rules has proposed amendments to the Federal Rules of Civil Procedure. The proposed rules amendments are: 4, New rule 4.1, 5, 12, 14, 15, 16, 24, 26, 28, 30, 34, 35, 38, 41, 44, 45, 47, 50, 52, 53, 56, 63, 72, 77, New Forms 1-A, and 1-B, Form 18 A, and Proposed Amendments to the Supplemental rules for Certain Admiralty and Maritime Claims, rule C, rule E. The Committee has received numerous comments and conducted two hearings. It will consider these comments and the proposed amendments at a meeting which will be open to public observation but not participation. The meetings will begin each day at 9 a.m.

DATE: June 7-9, 1990, New York, New York.

ADDRESSES:

June 7 and 8—United States Court of International Trade, One Federal Plaza, Room 862, New York, NY 10007.

June 9—Vista International Hotel, New York Harbor and Hudson River room, 3rd Level, 3 World Trade Center, New York, NY 10048.

Those interested in obtaining copies of the proposed amendments should write to James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Washington, DC 20544, no later than August 31, 1990.

Dated: April 23, 1990.

James E. Macklin, Jr.,

Secretary, Committee on Rules of Practice and Procedure.

[FR Doc. 90-9990 Filed 4-30-90; 8:45 am]

BILLING CODE 221001-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Rockingham Motor Sales

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that on April 24, 1990 a proposed Consent Decree in *U.S.* v. *James Fukumoto, d/b/a Rockingham Motor Sales* (W.D. Va.) Civil Action No. 89-0045-H was lodged with the United States District Court for the Western District of Virginia. The Consent Decree concerns alleged violations of section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7522(a)(3)(B). The proposed Consent Decree requires defendant James Fukumoto to pay a civil penalty of $4,000.000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *U.S.* v. *James Fukumoto, d/b/a Rockingham Motor Sales,* D.J. No. 90-5-2-1-1359.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Virginia, Room 456, Poff Federal Building, 210 Franklin Rd., SW., Roanoke, Virginia 24011, and the U.S. Environmental Protection Agency, Office of Air Radiation, 401 M Street, SW., Washington, DC 20460. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

George Van Cleve,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90-10070 Filed 4-30-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Petroleum Environmental Research Forum (PERF) Project No. 88-04: Bioreclamation of Oily Soil

Notice is hereby given that on March 28, 1990, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in Petroleum Environmental Research Forum ("PERF") Project No. 88-04, titled "Bioreclamation of Oily Soil," filed a written Notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the project and (2) the nature and objectives of the project. The Notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified conditions. Pursuant to section 6(b) of the Act, the identities of the parties participating in the project and the nature and objectives of the project are given below.

The parties to the project are the following: Amoco Oil Company, BP America; Chevron Research Company; Conoco, Inc.; Mobil Oil Corporation; Murphy Oil USA, Inc.; Pennzoil Products Company; Union Oil Company of California; Texaco Inc.; and Remediation Technologies, Inc.

The nature and objectives of the project are to develop a "How To Do It" booklet describing in-situ and off-site bioremediation of soils containing petroleum products such as gasoline, jet fuel and diesel fuel with focus on spills. Data for the project are to come from the published literature, as well as unpublished information the contractor and project team members can provide. The booklet is to address at least the following aspects: Time required for remediation; effectiveness; site requirements; fate and degradation rates of PHSs; regulatory acceptance; human, agricultural, and environmental safety; cost; use constraints; and a clear, concise description of how to apply the technology.

Participation in this project will remain open until termination of Project No. 88-04, and the participants intend to file additional written notification disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from Conoco, Inc., P.O. Box 1267, Ponca City, Oklahoma 74603.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-10071 Filed 4-30-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Home Petroleum Corp.; Negative Determination Regarding Application for Reconsideration

In the matter of

TA-W-23,699 Headquartered in Denver, Colorado

TA-W-23,699A Various Locations in Louisiana and Operating out of Various Field Offices in

TA-W-23,700	Geary, Oklahoma
TA-W-23,701	Plaza, North Dakota
TA-W-23,702	Rock Springs, Wyoming
TA-W-23,703	Houston, Texas
TA-W-23,704	Gillette, Wyoming

By an application dated March 8, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on February 5, 1990 and published in the **Federal Register** on March 8, 1990 (55 FR 8616).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers of the subject firm produced crude oil, natural gas liquids and natural gas.

The Department's denial of the worker petition for the subject firm was based on the fact that the "contributed importantly" test and the decreased sales or production requirements of the Group Eligibility Requirements of the Trade Act were not met.

Investigation findings show that all of the subject firm's oil and gas assets were sold on December 13, 1989 to another domestic oil firm. Other findings show that the subject firm had increased sales and production in 1988 compared to 1987 and in first 11 months of 1989 compared to the same period in 1988.

The company claims that Home Petroleum meets the decreased sales or production requirement with respect to natural gas for 1989 if the 11-month natural gas sales were annualized for 1989. But Home Petroleum was sold on December 13, 1989 and the alleged losses of natural gas sales by another firm after December 13, 1989 would not form a basis for the certification of workers of Home Petroleum Corporation. The event which led to worker separations in December 1989 was the sale of Home Petroleum's assets to another domestic oil company—not increased imports of natural gas.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of April 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-10108 Filed 4-30-90; 8:45 am]

BILLING CODE 4510-30-M

Identification of Qualified Sources To Administer Training and Employment Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration, Department of Labor, seeks to identify qualified sources which currently operate nationally administered training and employment programs, for the possibility of participating in the Department of Labor's Job Training Partnership Act National Partnership Program and/or its National Training Demonstration Program.

DATES: Interested organizations should submit the information requested in this notice by May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Janice E. Perry. Telephone: (202) 535-8702. (This is not a toll-free number).

ADDRESSES: Responses to the notice should have all the information requested by this notice and should be sent to the Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, 200 Constitution Avenue, NW., Room C-4305, Washington, DC 20210; *Attention:* Sources sought desk.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) currently funds the National Partnership Program grantees, and the National Training Demonstration Program grantees under the authorization of the Job Training

Partnership Act (JTPA) title IV, section 451(a), as activities which are "operated in more than one State", and section 451(b), as endeavors designed to develop information networks among local programs with similar objectives under this Act and programs that address industry-wide skill shortages.

National Partnership Programs

The basic purpose of the partnership programs is to increase the level and quality of support and involvement of national business, labor and community-based organizations in the conduct of training activities under JTPA. Among other things, the programs provide a mechanism for making improved information on JTPA concerns, e.g., priorities, initiatives, guidelines, regulations, and procedures, available to the respective network of affiliates or constituent groups.

DOL supports the participating national organizations, in part, because they represent broad constituencies and have special capabilities in promoting and coordinating training efforts and facilitating cooperation both among themselves as well as with the private sector and government.

The Employment and Training Administration (ETA) is interested in identifying, for the possibility of participating in this JTPA Program, any and all organizations that conduct employment and training programs on a national scale to the specific client groups currently being serviced by the Community-Based Organizations listed below:

National Council of La Raza

Provides technical assistance services to 80 affiliates or community-based groups in 32 states and Puerto Rico to increase and improve JTPA-funded and related employment and training programs for Hispanic Americans.

Ser-Jobs For Progress, Inc.

The SER national office and training to its approximately 45 affiliates across the nation in order to enhance the delivery of training and employment services to the Hispanic community as well as other minority populations in the local community.

National Puerto Rican Forum

Provides job development and referral services, training program referral services, and English as a Second Language training in an effort to increase employment opportunities and decrease unemployment among Puerto Ricans, other Hispanics, and other economically disadvantaged persons, especially those with limited English speaking capability or other language barriers.

National Urban League

Provides technical assistance and training through their 113 affiliates network in the areas of program and staff development, program and fiscal management, career counseling, skill training and job placement, with emphasis on services to welfare recipients and youth in the African-American community.

70001 Limited

Provides technical assistance and training through its 67 affiliates and other public agencies, such as local governments and school systems, and provides support in the development and implementation of new program approaches and models for more effectively serving-at-risk youth—a high priority group under JTPA.

National Training Demonstration Program

Programs in this category involve contracts and grants with major employer associations, labor organizations and other parties that deal with skill shortages at the national level. Programs are often administered under the stewardship of organizations that have direct influence over the employment and training practices of major industries.

These demonstration programs stress entry-level training and placement of economically disadvantaged persons in skilled, high-wage jobs in private industry. The training offered by these programs of "demonstrated effectiveness" always includes on-the-job experience which typically is coupled with related classroom instruction. Outreach, recruitment, assessment, counseling, remedial education, GED preparation, vocational guidance, job development and follow-up comprise additional common components. The Employment and Training Administration is interested in identifying, for the possibility of participating in this JTPA Program, any and all organizations that conduct employment training programs on a national scale to the specific client groups currently being serviced by the organizations listed below:

National Association of Homebuilders

This program provides apprenticeship training through its 800 affiliates which is designed to meet the skilled labor needs of the home building industry in a variety of different crafts, e.g., carpentry, electronics, plumbing, and heating.

Prep, Inc.

This program conducts a target outreach program for disadvantaged minorities in the construction trades. Particular emphasis has now been given to serving women as its major target group and has been successful in broadening opportunities for females in construction trades and non-traditional occupations on a national scale.

National Tooling and Machining Association

Through their affiliates operate various training programs, particularly involving upgrading and new technology. In the past, the local affiliates used its facilities for apprenticeship and skills upgrade training. They now use them for pre-entry program to qualify JTPA-eligible persons for entry into the industry.

National Organizations having the capabilities described under either program category are invited to submit complete organizational capability profiles to the Division of Acquisition and Assistance at the above-listed address. Each profile should include: (1) An outline of previous training and employment programs operated on a national scale; (2) a description of professional personnel specifically qualified in the training and employment field outlined; (3) information on total number of employees and organizational structure; and (4) any other available descriptive literature about the organization and its services.

Note:

This is not a Request for Proposal (RFP) or a Solicitation for Grant Application (SGA), and no selection for funding will result from this notice.

Signed at Washington, DC, this 26th day of April, 1990.

Robert D. Parker,

ETA Grant Officer.

[FR Doc. 90-10109 Filed 4-30-90; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Targeted Training grants

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of grant program.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is implementing a national program to award grants to organizations that have the capability of addressing OSHA identified unmet needs for safety and

health education in the workplace. This notice describes the scope and objectives of the grant program, and provides information on how to obtain a grant application. Grant application packages may be obtained only from the OSHA Regional Administrators listed later in this notice. Completed applications should be sent to the same Regional Administrator.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act 1970 (29 U.S.C. 670).

DATES: Application packages must be received by the appropriate Regional Administrator by June 29, 1990.

ADDRESSES: Grant applications must be submitted to the OSHA Regional Office for the state in which the applicant is located. A complete listing of Regional Offices can be found in the addendum at the end of the supplementary information section of this notice.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8148. (Do not call this number for grant application packages.)

SUPPLEMENTARY INFORMATION:

Background

Section 21(c) of the Occupational Safety and Health Act provides for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions. OSHA has used a variety of approaches over the years to fulfill its responsibilities under this section, one of which is the awarding of grants to nonprofit organizations to provide training and education to employees and employers.

At the present time there is a need to provide training and education programs directed at small business which address new OSHA standards, areas of special emphasis, or recognized high hazard areas. The Targeted Training Program is designed to meet this need. Organizations awarded grants under this program will be expected to develop training and/or educational programs which address a target named by OSHA, reach out to employees and employers for whom the program is appropriate, and provide them with the training and/or educational program. Success will be measured by the number of individuals participating in the program and evidence of their increased hazard recognition and abatement or compliance with standards.

Scope

The purpose of this notice is to announce the availability of funds for grants which address the following occupational safety and health training and education needs.

1. Agricultural health and safety, particularly the safe use of agricultural chemicals, safe grain handling and storage, use of personal protective equipment, and the safe use of agricultural equipment.

2. Hazard communication for small businesses that do not have safety and health staff to assist them, particularly in establishing a comprehensive hazard communication program, including training for employees exposed to hazardous substances and the safe handling and storage of hazardous substances.

Among the activities which may be supported under these grants are: Developing educational materials, conducting training, conducting other educational activities designed to reach and inform employees and employers, and assisting small businesses in establishing hazard communication procedures.

Eligible Applicants

Any nonprofit organization is not an agency of a State or local government is eligible to apply

Nonsupportable Activities

Statutory and regulatory limitations, as well as the objectives of the grant program, prevent reimbursement for certain activities under these grants. These limitations include the following.

1. Any activities inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Activities involving workplaces that are largely precluded from enforcement action by the Occupational Safety and Health Administration under section 4(b)(1) of the Act.

3. Production, publication, or reproduction of training and educational materials, including programs of instruction, which have not been approved by OSHA.

4. Lobbying.

5. Training and other educational activities that primarily address issues other than recognition, avoidance, and prevention of unsafe or unhealthful working conditions. Examples include activities concerning workers' compensation, first aid, and publication of materials prejudicial to labor or management.

6. Activities which provide assistance to employees in arbitration cases or other actions against employers, or which provide assistance to employers and/or employees in the prosecution of claims against Federal, State, or local governments.

7. Activities which directly duplicate services offered by OSHA, a State under a State plan, or consultation programs provided by State designated agencies under sections 7(c)(1) or 23(g) of the Act.

8. Activities directly or indirectly intended to generate membership in the grant recipient's organization.

Administrative Requirements

The grant program will be administered in compliance with 41 CFR part 29-70 and OMB Circulars A-21 or A-122. All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR Part 98 and to comply with the New Restrictions on Lobbying (29 CFR part 93) published in the Federal Register on February 26, 1990.

This program is subject to matching share requirements. Grant recipients will be expected to provide a minimum of 20% of the total grant budget. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

Evaluation Process and Criteria

Applications for grants solicited in this announcement will be evaluated on a competitive basis by the Assistant Secretary with assistance and advice from OSHA staff.

The following factors, not ranked in order of importance, will be considered in evaluating grant applications.

1. Program Design

a. The plan to develop and implement a training and education program which addresses one of the targets.

b. The number of employees and employers to be reached by the program.

c. The appropriateness of the planned activities for the target population.

d. The plan for evaluating the program's effectiveness in achieving its objectives.

e. The feasibility and soundness of the proposed work plan in achieving the program objectives effectively.

2. Program Experience

a. Evidence of the applicant organization's performance and effectivenes in planning, implementing,

and operating training and education in the proposed or related areas. Experience in conducting employer or employee occupational safety and health education programs, or involvement in related occupational safety and health activities will be considered relevant.

b. The technical and professional expertise of present or proposed project staff in relation to the proposed training and education program.

3. Administrative Capability

a. The managerial expertise of the organization, as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. The financial management capability of the organization, as evidenced by a recent report from an independent audit firm or from another independent organization qualified to render judgment concerning the soundness of the applicant's financial practices.

c. Evidence of the applicant's nonprofit status, preferably from the IRS.

4. Budget

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with applicable Federal cost principles.

Availability of Funds

There is approximately $340,000 available for this program in fiscal year 1990. It is anticipated that the average Federal award will be $100,000. The grants will be awarded for a twelve-month period.

Application Procedures

Those organizations that meet the eligibility requirements described above and are interested in conducting project activities as described, may request a grant application package from the OSHA Regional Administrator responsible for the state in which the organization is located. A lost of the names, addresses, and geographic areas of responsibility of Regional Administrators is in the addendum to this notice.

All applications must be received no later than 5 p.m. local time, June 29, 1990.

Notification of Selection

Following review and selection, those organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will also be notified in writing to that effect. Notice of selectionas a potentiall grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant recipient and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations of not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, the 25 day of April, 1990.

Gerard F. Scannell,

Assitant Secretary of Labor.

Addendum

Region I

John B. Miles, Jr., Regional Administrator, U.S. Department of Labor-OSHA, 133 Portland Street, 1st Floor, Boston, Massachusetts 02114 (617) 565-7164—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II

James W. Stanley, Regional Administrator, U.S. Department of Labor-OSHA, 201 Varick Street, Room 670, New York, New York 10014 (212) 337-2378—New Jersey, New York, Puerto Rico, Virgin Islands

Region III

Linda R. Anku, Regional Administrator, U.S. Department of Labor-OSHA, Gateway Building, Suite 2100, 3535 MARKET Street, Philadelphia, Pennsylvania 19104 (215) 596-1201—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

Region IV

R. Davis Layne, Regional Administrator, U.S. Department of Labor-OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367 (404) 347-3573—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V

Michael G. Connors, Regional Administrator, U.S. Department of Labor-OSHA, 230 South Dearborn Street, room 3244, Chicago, Illinois 60604 (312) 353-2220—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI

Gilbert J. Saulter, Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Square Building, room 602, Dallas, Texas 75202 (214) 767-4731—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII

Regional Administrator, U.S. Department of Labor-OSHA, 911 Walnut Street, room 406, Kansas City, Missouri 64106 (816) 426-5861—Iowa, Kansas, Missouri, Nebraska

Region VIII

Byron R. Chadwick, Regional Administrator, U.S. Department of Labor-OSHA, Federal Building, room 1576, 1961 Stout Street, Denver, Colorado 80294 (303) 844-3061—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX

Frank L. Strasheim, Regional Administrator, U.S. Department of Labor-OSHA, 71 Stevenson Street, Suite 415, San Francisco, California 94105 (415) 744-7107—American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territory of the Pacific Islands

Region X

James W. Lake, Regional Administrator, U.S. Department of Labor-OSHA, 111 Third Street, room 715, Seattle, Washington 98101 (206) 442-5930—Alaska, Idaho, Oregon, Washington

Q. *How many copoies of the application should I submit?*

A. Submit one original and three copies. Please do not bind them.

Q. *When will I find out if I am going to be funded?*

A. You can expect to receive notification about two months after the application closing date.

Q. *Can I obtain copies of the reviewers' comments?*

A. Copies of reviewers' comments will be mailed to unsuccessful applicants upon written request.

Q. *Can I provide consultant services to individual small businesses to help them come into compliance with the hazard communication standard?*

A. No. The grant program is a training and education program, not a consultation program. Grant activities must be training and education related.

Q. *What is a small business?*

A. A small business is a firm which employs 500 or fewer employees.

Q. *Is it permissible to run a train-the-trainer program on hazard communication for small businesses, training one individual for each firm who will then train the other employees of the firm?*

A. Yes. This is an acceptable program activity.

Q. *I want to submit an application addressing agricutural hazards. Must my program address all three of the hazards mentioned in the Federal Register Notice?*

A. No. Proposals for agricultural programs should address at least one of the hazards mentioned.

Q. *Can I budget for the lost time wages of employees participating in a training program?*

A. No. OSHA does not fund lost time wages in its grant programs.

Q. *You request a copy of a recent audit but our organization has not had an audit for three years. What do I submit?*

A. Explain in the narrative when the last audit was conducted. If it was more than two years ago, i.e., before 1988, submit a copy of your most recent IRS tax return for a nonprofit organization instead.

Q. *Must the program include classroom training? I would like to develop a self-instruction program.*

A. There are no required activities for grants, provided that activities proposed are educational in nature. A self-instruction program would be acceptable, so long as it included a plan for distribution to the target population.

[FR Doc. 90-10008 Filed 4-30-90; 8:45 am]

BILLING CODE 4510-26-M

Training and Education Grants for Improving Employee Understanding of MSDS's

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of grant program.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is implementing a one-time grant program to provide training and education grants to improve the technical literacy of employees so that they may more readily understand the scientific terminology of material safety data sheets or to develop methods for simplifying some of the information contained in MSDS's. This notice describes the scope and objectives of the program, and provides information about obtaining a grant application. Applications should not be submitted without first obtaining the detailed grant application mentioned later in the notice.

Authority for this program may be found in section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670).

DATES: Application packages must be received by June 29, 1990.

ADDRESS: Grant applications must be submitted to the OSHA Regional Office for the state in which the applicant is located. A complete listing of Regional Offices can be found in the addendum at the end of the supplementary information section of this notice.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523-8148.

SUPPLEMENTARY INFORMATION:

Background

Material safety data sheets (MSDS's) are technical bulletins or summaries of information regarding hazardous chemicals. The information contained in MSDS's includes chemical identity, hazards, and recommended protective measures. Under OSHA's hazard communication standard (29 CFR 1910.1200, 29 CFR 1915.99, 29 CFR 1917.28, 29 CFR 1918.90, and 29 CFR 1926.59), these documents are to be made available to employers obtaining products containing hazardous chemicals, exposed employees, and designated representatives of employees, such as physicians providing medical treatment related to exposure. In addition to their role in workplace hazard communication, MSDS's are also being used by emergency response personnel and other members of the community under laws administered by the Environmental Protection Agency, the Superfund Amendment and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*). Since MSDS's are being used for multiple purposes, much of the information is presented in technical, scientific or legal terminology. There are indications that some employees and other members of the community have difficulty using some of the information because of the technical or legal language.

Program Description

This notice announces a demonstration grant program being funded by OSHA to address improving the technical literacy of employees through education so that employees may more readily understand the scientific terminology of MSDS's and to make the technical aspects of MSDS's more understandable by employees.

Grant recipients will develop an education program to improve the ability of employees to comprehend technical information on MSDS's or to develop methods for simplifying some of the information contained in MSDS's. The program may involve providing training to employees or developing educational aids to assist employees or a combination of both. It may also involve reorganization or rewriting sections of the MSDS's so that information important to employees can be more readily identified and understood. Among the approaches grant applicants may propose are: redesigning required training to ensure that employees can access and understand appropriate information; developing supplemental materials for employees to consult when using MSDS's, such as glossaries to define terms; including a summary of important information in lay language on the MSDS' and reorganizing or rewriting MSDS's so that they are more readily understood by employees.

Grant recipients will develop criteria to determine what information the employee needs to understand the MSDS and how much of that information is being adequately conveyed. The criteria will be used to measure program effectiveness through objective means, such as pre-tests and post-tests.

Grant recipients will be expected to pilot test their programs and to refine them during the grant period. Copies of final curriculums, training aids, tests, and other educational materials or simplified MSDS information will be provided to OSHA at the end of the grant period. The materials will be in the public domain and it is anticipated that they will also be made available to members of the community upon request. Grant recipient will prepare a final report on their program, including a description of how technical literacy was improved based upon test scores or other objective data and a description of how the program increased employee awareness of hazards in the workplace.

This program is subject to matching share requirements. Grant recipients will be expected to provide a minimum of 20% of the total grant budget. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

The grant program will be administered in compliance with 41 CFR part 29-70 and OMB Circular A-122. All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98 and to comply with the Interim Final Guidance for New Restrictions on Lobbying published at 54 FR 52306 on December 20, 1989.

Eligible Applicants

Any nonprofit organization which is not an agency of a State or local government is eligible to apply.

Unallowable Activities

The following activities are prohibited under this grant program.

1. Program activities which do not address improving employee understanding of technical aspects of MSDS's or simplifying some of the information contained in MSDS's.

2. Program activities involving workplaces largely precluded from enforcement actions under section 4(b)(1) of the Occupational Safety and Health Act.

3. Activities for the benefit of State, county or municipal employees.

4. Production, publication or reproduction of training and educational materials or modified MSDS's which have not been approved by OSHA

Review Procedures and Criteria

Applications for grants solicited in this notice will be reviewed on a competitive basis by the Assistant Secretary for Occupational Safety and Health with assistance and advice from technical staff.

The following factors, which are not ranked in order of importance, will be considered in evaluating grant applications.

1. Program Design

a. Potential impact of the program as evidenced by:

i. The number of employees to be reached by the program and

ii. The number of workplaces in which these employees are employed.

b. Soundness of the program as evidenced by:

i. The plan to develop an educational program to improve the technical literacy of employees as it relates to understanding information on MSDS's or to develop methods for simplifying some of the information contained in MSDS's, including the description of its component parts;

ii. The plan to field test the program with employees; and

iii. Plans for program evaluation for effectiveness in achieving its objectives.

2. Program Experience

a. Prior occupational safety and health experience of the organization.

b. Previous and current training or education programs conducted by the organization.

c. Technical and professional expertise of present or proposed project staff in relation to the proposed training and/or educational aids development.

3. Administrative

a. Managerial expertise of the applicant as evidenced by the variety and complexity of current and/or recent programs it has administered.

b. Financial management capability of the applicant as evidenced by a recent report from an independent audit firm or a recent report from another independent organization qualified to render judgment concerning the soundness of the applicant's financial practices.

c. Evidence of the applicant's nonprofit status, preferably from the IRS.

4. Budget

a. The reasonableness of the budget in relation to the proposed program activities.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The compliance of the budget with applicable Federal cost principles.

Availability of Funds

There is approximately $450,000 available for this program in fiscal year 1990. The grants will be awarded for a twelve-month period.

Application Procedures

Those organizations meeting the eligibility requirements which are interested in developing programs to improve the technical literacy of employees so that they may more readily understand the scientific terminology of MSDS's may request a grant application package from the Regional Administrator responsible for the state in which the organization is located. A list of the names, addresses, and geographic areas of responsibility of the Regional Administrators is in the addendum to this notice.

All applications must be received no later than 5 p.m. local time, June 29, 1990.

Notification of Selection

Following review and selection, those organizations selected as potential grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will also be notified in writing to that effect. Notice of selection as a potential grant recipient will not constitute approval of the grant application as submitted. Prior to the actual grant award, representatives of the potential grant recipient and OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 25 day of April 1990.

Gerard F. Scannell,

Assistant Secretary of Labor.

Addendum

Region I

John B. Miles, Jr., Regional Administrator, US Department of OSHA, 133 Portland Street, 1st Floor, Boston, Massachusetts 02114—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Region II

James W. Stanley, Regional Administrator, US Department of Labor-OSHA, 201 Varick Street, Room 670, New York, New York 10014—New Jersey, New York, Puerto Rico, Virgin Islands

Region III

Linda R. Anku, Regional Administrator, US Department of Labor-OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 191014—Delaware, District of Columbia, Maryland, Pennsylvania Virginia, West Virginia

Region IV

R. Davis Layne, Regional Administrator, US Department of Labor-OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee

Region V

Michael G. Connors, Regional Administrator, US Department of Labor-OSHA, 230 South Dearborn Street, Room 3244, Chicago, Illinois 60604—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin

Region VI

Gilbert J. Saulter, Regional Administrator, US Department of Labor-OSHA, 525 Griffin Square Building, Room 602, Dallas, Texas 75202—Arkansas, Louisiana, New Mexico, Oklahoma, Texas

Region VII

Regional Administrator, US Department of Labor-OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106—Iowa, Kansas, Missouri, Nebraska

Region VIII

Byron R. Chadwick, Regional Administrator, US Department of Labor-OSHA, Federal Building, Room 1576, 1961 Stout Street, Denver, Colorado 80294—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming

Region IX

Frank L. Strasheim, Regional Administrator, US Department of Labor-OSHA, 71, Stevenson Street, Suite 415, San Francisco, California 94105—American Samoa, Arizona, California, Guam, Hawaii, Nevada, Trust Territory of the Pacific Islands

Region X

James W. Lake, Regional Administrator, US Department of Labor-OSHA, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174—Alaska, Idaho, Oregon, Washington.

Appendix

To assist potential applicants, OSHA has assembled the following questions and answers.

Q. *Can we get an extension of the deadline?*

A. No. Waivers for individual applications cannot be granted, regardless of the circumstances. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications.

Q. *Will you help us prepare our application?*

A. No. We will answer specific questions about application requirements and evaluation criteria and any other subjects which will help potential applicants understand the application package.

Q. *How long should an application narrative be?*

A. There is no specified length. Generally 10 to 15 pages is sufficient. However, the most important thing to remember when completing the narrative is to address all items requested in the application package and to provide enough description of proposed program activities so that reviewers have a thorough understanding of the proposal.

Q. *How many copies of the application should I submit?*

A. Submit one original and three copies. Please do not bind them.

Q. *When will I find out if I am going to be funded?*

A. You can expect to receive notification about two months after the application closing date.

Q. *Can I obtain copies of the reviewers' comments?*

A. Copies of reviewers' comments will be mailed to unsuccessful applicants upon written request.

Q. *Can we budget for the lost time wages of employees participating in the educational program?*

A. No. OSHA does not fund lost time wages in its grant programs.

Q. *You request a copy of a recent audit but our organization has not had an audit for three years. What do I submit?*

A. Explain in the narrative when the last audit was conducted. If it was more than two years ago, i.e., before 1988, submit a copy of your most recent IRS tax return for a nonprofit organization instead.

Q. *Must the technical literacy part of the proposal include classroom instruction? I would like to develop a self-instruction program on technical literacy.*

A. There are no required activities for grants, provided that activities proposed are educational in nature. A self-instruction program would be acceptable.

[FR Doc. 90-10009 Filed 4-30-90; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting: Expansion Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Rural Arts Initiative Section) to the National Council on the Arts will be held on June 6, 1990, from 9:15 a.m.—5:30 p.m. in room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 6 from 9:15 a.m.—10 a.m. and from 4 p.m.—5:30 p.m. The topics will be opening remarks and general program overview and policy issues.

The remaining portion of this meeting on June 6 from 10 a.m.—4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, those sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202)682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 23, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-10067 Filed 4-30-90; 8:45 am]

BILLING CODE 7537-01-M

Folk Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel to the National Council on the Arts will be held on June 5-7, 1990 from 9 a.m.-6 p.m. and on June 8, 1990, from 9 a.m.-5 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 7, 1990, from 11:30 a.m.-12:30 p.m. The topic for discussion will be policy issues.

The remaining portions of this meeting on June 5-6, 1990, from 9 a.m.-6 p.m., on June 7, from 9 a.m.-11:30 a.m. and from 12:30 p.m.-6 p.m., and June 8 from 9 a.m.-5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in conference to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 24, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-10068 Filed 4-30-90; 8:45 am]

BILLING CODE 7537-01-M

Meetings: Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: Catherine Wolhowe, Advisory Committee Management Officer, (Alternate) National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a

personal nature the disclosure of which would consititute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency action, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

1. Date: May 18, 1990.
   Time: 8:30 a.m. to 5 p.m.
   Room: 430.
   Program: This meeting will review applications for HBCU Faculty Graduate Study, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1991.
2. Date: May 24, 1990.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Texts/Publication Subvention in History, submitted to the Division of Research Programs, for projects beginning after October 1, 1991.
3. Date: May 30, 1990.
   Time: 8:30 a.m. to 5 p.m.
   Room: 315.
   Program: This meeting will review applications for Texts/Publication Subvention in Literature, submitted to the Division of Research Programs, for projects beginning after October 1, 1991.

Catherine Wolhowe,

Advisory Committee, Management Officer (Alternate).

[FR Doc. 90-10093 Filed 4-30-90; 8:45 am]

BILLING CODE 7536-01-M

Meetings: Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Artists' Projects: New Forms Section) to the National Council on the Arts will be held on May 21-22, 1990, from 9:30 a.m.-8 p.m., on May 23-24 from 9:30 a.m.-7 p.m., and on May 25 from 10 a.m.-5 p.m. in rooms 714 and 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 25 from 1:45 p.m.-5 p.m. The topic will be policy issues and guidelines.

The remaining portions of this meeting on May 21-22 from 9:30 a.m.-8 p.m., on May 23-24 from 9:30 a.m.-7 p.m. and on May 25 from 10 a.m.-1:45 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: April 24, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-10069 Filed 4-30-90; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-413 and 50-414]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF-35 and NPF-52 issued to Duke Power Company for operation of Catawba Nuclear Station, Units 1 and 2 located in York County, South Carolina.

The proposed amendments would revise Technical Specification (TS) 3/4.9.11 "Fuel Handling Ventilation Exhaust System" and its associated bases. The revision would change the carbon adsorber test method to ensure that the fuel pool ventilation filters have a decontamination efficiency of greater than or equal to 95% under all postulated operating conditions. The laboratory test of carbon samples will be conservatively tested at 95% relative humidity, instead of 70% which is currently required. Changing the allowable penetration for the carbon beds to 0.71% instead of 1% would improve the safety factor of the fuel pool ventilation system.

During the licensee's review of the design bases at Catawba Nuclear Station it was discovered that the safety-related fuel pool ventilation system heaters were not conservatively sized for all postulated operating modes. During low voltage conditions sufficient power is not supplied to the heaters to maintain the relative humidity of the air entering the pool ventilation system filter below 70%.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendments involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed revision would not involve a significant increase in the probability or consequences of an accident previously evaluated because the Final Safety Analysis Report (FSAR) chapter 15 accidents were evaluated using a decontamination efficiency of 95%. Therefore, offsite and onsite doses would remain the same.

The proposed revision would not create the possibility of a new or different kind of accident from any accident previously evaluated because it would not involve any physicial changes to the station or its operating procedures, and would not introduce any new modes of operation.

Finally, the proposed revision would not involve a significant reduction in a margin of safety because the FSAR chapter 15 accident analysis were evaluated using a decontamination factor of 95%, and the offsite and onsite dose analyses would remain the same.

Therefore, based on the above considerations, the Commission has

made a proposed determination that the amendment request involves no signficant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washigton, DC. The filing of request for hearing and petitions for leave to intervene is discussed below.

By May 31, 1990, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consists of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards considerations. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–600 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to David Matthews (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this Federal Register notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated April 23, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 25th day of April 1990.

For the Nuclear Regulatory Commisson.

Len Wiens,

Project Manager Project Directorate II-3 Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 90-10078 Filed 4-30-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-171]

Renewal of Possession-Only License No. DPR-12, Philadelphia Electric Co., Peach Bottom Atomic Power Station, Unit No. 1

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 7 to Possession-Only License No. DPR-12 for Philadelphia Electric Company (the licensee), which renews the license for Peach Bottom Atomic Power Station, Unit No. 1, located in York County, Pennsylvania.

The renewed Possession-Only License No. DPR-12 will expire on December 24, 2015.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I. Those findings are set forth in the license amendment. Opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on October 12, 1989 at 54 FR 41886. No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a related Safety Evaluation for the renewal of Possession-Only License No. DRP-12 and has, based on that evaluation, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment for the renewal of Possession-Only License No. DPR-12 and has concluded that this action will not have a significant effect on the quality of the human environment. The Environmental Assessment and Finding of No Significant Environmental Impact was published in the **Federal Register** on April 24, 1990.

For further details with respect to this action, see: (1) The application for amendment dated November 24, 1975, as supplemented by letters dated March 4, 1987, December 16, 1988, July 12, 1989 and August 23, 1989; (2) Amendent No. 7 to Possession-Only License No. DPR-12; (3) the related Safety Evaluation; and (4) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC. 20555 and at the State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 25th day of April 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate Division of Reactor Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 90-10079 Filed 4-30-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 030-02623; 030-11781; 070-03042, and License Nos. 31-02892-03; 31-02892-05; SNM-1969; EA 89-190]

Veterans Administration Medical Center, Brooklyn, NY; Order Imposing Civil Monetary Penalties

I

Veterans Administration Medical Center, Brooklyn, New York (Licensee) is the holder of License Nos. 31-02892-03, 31-02892-05, and SNM-1969 (licenses) issued by the Nuclear Regulatory Commission (Commission or NRC) which authorizes the licensee to use various licensed radioactive materials for diagnostic and therapeutic medical purposes as well as research, in accordance with the conditions specified therein. The licenses, respectively were issued on July 31, 1958, July 2, 1976, and July 28, 1986, were most recently renewed on April 14, 1987 and July 2, 1987, and are due to expire on April 30, 1991, June 30, 1992, and July 31, 1990.

II

An NRC safety inspection of the Licensee's activities under the licenses was conducted at the licensee's facility on July 19-21, 1989 and continued in Region I between August 12-21, 1989 to review additional documentation submitted by the licensee that was unavailable at the time of the inspection. The results of the inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the Licensee by letter dated November 28, 1989. The Notice stated the nature of the violations, the provisions of the Nuclear Regulatory Commission's requirements that the Licensee had violated, the severity level of the violations, and the amount of the civil penalties proposed for the violations. The Licensee responded to the Notice by letter dated January 3, 1990. In its response, the Licensee admitted that the violation set forth in Section I of the Notice occurred and did not deny the violations set forth in section II of the Notice but (1) asserted that the basis for the civil penalty of the violation in Section I of the Notice is erroneous and unwarranted, and (2) asserted that the violations in Section II of the Notice are Severity Level IV and V violations and, therefore, normally do not warrant a civil penalty and requested that the civil penalty for Violations II.H and II.I be reduced.

III

Upon consideration of the Licensee's response and the statement of facts, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated in the Notice, with the exception of Violation II.I which has been amended and restated as set forth in the Appendix to this Order, and were appropriately classified with respect to Severity Level, and that the penalty proposed for the violations set forth in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act) 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $8,750 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearing and Enforcement, at the same address and to the Regional Administrator, USNRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be whether or not, on the basis of the violations set forth in the Notice as amended and admitted by the Licensee, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 20th day of April 1990.

Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusion

On November 28, 1989, a Notice of Violation and Proposed Imposition of Civil Penalties was issued to Veteran's Administration Medical Center, Brooklyn, New York, for violations identified during an NRC inspection. The licensee responded to the Notice by letter dated January 3, 1990. In its response, the licensee (1) admits the violation in section I of the Notice, but asserts that the basis for the civil penalty for this violation is erroneous and unwarranted; and (2) does not deny the violations in section II of the Notice, but asserts that these are Severity Level IV and V violations and, therefore, normally do not warrant a civil penalty and requests that the civil penalty for Violations II.H and II.I be reduced.

1. *Restatement of Violations*

I. License Condition 15 of NRC License 31–02892–05 requires, in part, that licensed radioactive material be possessed and used in accordance with the statements, representatives, procedures and enclosures to the licensee's application dated June 30, 1981.

Item 1 of the emergency procedure which was included with this application requires that in the event the teletherapy unit source drawer fails to return to the safe shielded position, the patient is to be removed from the treatment room.

Contrary to the above, while a patient was undergoing teletherapy on October 25, 1988, the teletherapy unit source drawer failed to return to the safe shielded position because of a timer failure, and the patient was not removed from the treatment room.

This is a Severity Level III violation (Supplement VI)

Civil Penalty—$2,500

II. A. 10 CFR 35.13(c) requires that a licenses apply for and receive a license amendment before it changes its Radiation Safety Officer.

Contrary to the above, the Radiation Safety Officer was changed in May 1988; however, the licensee did not apply for or receive a license amendment until June 1989.

B. 10 CFR 35.21(a) requires, in part, that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are performed in accordance with approved procedures and regulatory requirements, in the daily operation of the licensee's byproduct safety program. Further, 10 CFR 35.21(b)(2) requires, in part, that the RSO implement written policy and procedures for performing periodic radiation surveys; training personnel who work in areas where byproduct material is used; and keeping a copy of all records and reports required by the Commission regulations, a copy of these regulations, a copy of each licensing request and license and amendments, and the written policy and procedures required by the regulations.

Contrary to the above, as of July 21, 1989, the Radiation Safety Officer (RSO) did not ensure that radiation safety activities were performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's byproduct material program. For example, the RSO was not assigned the responsibility for ensuring, nor did he ensure, that the radiation safety activities in the teletherapy and nuclear cardiac pacemaker radiation safety programs were performed in accordance with the written policy and procedures required and did not keep any copies of records, reports, licenses or amendments associated with the teletherapy and nuclear cardiac imaging programs.

C. 10 CFR 35.22(a)(1) requires, in part, that membership in the Radiation Safety Committee includes an authorized user of each type of use permitted by the license.

Contrary to the above, as of July 21, 1989, membership in the Radiation Safety Committee did not include an authorized user of some of the types of use permitted by the license. Specifically, the membership in the Radiation Safety Committee did not include an authorized user from the teletherapy program or the nuclear cardiac pacemaker program.

D. 10 CFR 19.12 requires, in part, that all individuals working in or frequenting a restricted area be instructed in the precautions and procedures to minimize exposure to radioactive materials, in the purpose and function of protective devices employed, and in the applicable provisions of the Commission's regulations and licenses.

Contrary to the above, as of July 19, 1989, two individuals who worked in the research department, a restricted area, had not been instructed in the precautions and procedures to minimize exposure to radioactive materials, in the purposes and functions of protective devices employed, and in the applicable provisions of the Commission's regulations and licenses.

E. 10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with the regulations of Part 20 and which are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a) "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, as of July 21, 1989, necessary and reasonable surveys were not performed to assure compliance with 10 CFR 20.101(a), which establishes the maximum permissible radiation exposure limits to the whole body of individuals working in restricted areas. Specifically, no evaluation was made of the radiation exposure to the whole body of a teletherapy physician who worked in a restricted area and whose radiation dosimetry results were unavailable because the dosimeter was either damaged or returned to the vendor too late for processing during eight of twelve months in 1988.

F. License Condition 16 of NRC 31–02892–03 requires that licensed radioactive material be possessed and used in accordance with the statements, representations, and procedures contained in the radioactive material license application dated June 20, 1985.

1. Item 15 of the application dated June 20, 1985 states, in part, that radioactive materials will be handled in accordance with the general rules for the safe use of radioactive material described in Appendix G of Regulatory Guide (Reg. Guide) 10.8, "Guide for the Preparation of Applications for Medical Programs".

Item 1 of Appendix G requires that all personnel wear laboratory coats or other protective clothing at all times in areas where radioactive materials are used. Item 7 of Appendix G requires that all personnel wear personal radiation monitoring devices (film badge or thermoluminescent dosimeter) at all times when in areas where radioactive materials are used or stored.

Contrary to the above, on July 19, 1989, two individuals who used radioactive material in a search area did not wear laboratory coats or personal radiation monitoring devices.

2. Item 14 of the application dated June 20, 1985 requires that packages containing radioactive material be opened in accordance with the procedures described in Appendix F of Reg. Guide 10.8.

Item 2.f of Appendix F of Reg. Guide 10.8 requires that a wipe sample of the external surface of the source container be assayed and the amount of removable radioactivity recorded.

Contrary to the above, as of July 19, 1989, packages containing radioactive material were not opened in accordance with the procedures described in Appendix F of Reg. Guide 10.8. Specifically, on days when the Radiation Safety Officer was not present, although wipe samples of the external surfaces of the source containers were collected, the samples were not assayed for the amount of removable radioactivity.

3. Item 17 of the application dated June 20, 1985, requires that area radiation surveys be performed in accordance with the procedures described in Appendix I of Reg. Guide 10.8. Item 1 of Appendix I requires that all radiopharmaceutical elution, preparation, and injection areas be surveyed daily with an appropriately low-range radiation survey meter.

Contrary to the above, as of July 19, 1989, daily radiation surveys were not made of certain radiopharmaceutical elution, preparation, and injection areas, in that:

a. Daily radiation measurements were made only of refuse containers in the nuclear medicine area and not of the preparation and injection areas; and

b. Radiation surveys were not made of radiopharmaceutical elution, preparation, and injection areas on weekends when radioactive materials were used in the nuclear medicine area.

4. Item 17 of the application dated June 20, 1985, requires that area radiation surveys be perfomed in accordance with the procedures described in Appendix I of Reg. Guide 10.8. Item 4.b. of Appendix I provides that weekly and monthly surveys be conducted which consists of a series of wipe tests to measure contamination levels. The method for performing wipe tests are to be sufficiently sensitive to detect 200 dpm per 100 cm^2 for the contaminant involved. Item 6 of Appendix I requires that areas be cleaned if the contamination level exceeds 200 dpm/100 cm^2.

Contrary to the above, as of June 19, 1989, the weekly area radiation surveys were not performed in the nuclear medicine area in accordance with the procedures described in Appendix I, in that on days when the Radiation Safety Officer was absent the results of area radioactive contamination sample analyses were not converted from counts per minute to disintegrations per minute nor were the results compared to the appropriate action level (200 dpm/100 cm^2) to determine if the area was required to be cleaned.

G. 10 CFR 35.59(c)(3) requires that a wipe sample taken from a sealed source being tested for leakage in accordance with Section 35.59 be measured so that the leakage test can detect the presence of 0.005 microcurie of radioactive material on the sample.

Contrary to above, as of July 19, 1989, although the wipe test of the sealed sources were obtained and measured, the results of the test were recorded in cpm, and therefore, could not be compared to the 0.005 microcurie action level requirement of 10 CFR 35.59(e) to determine if the source should be removed from service and stored.

H. 10 CFR 35.632(a)(3) requires, in part, a full calibration measurement be performed on each teletherapy unit at intervals not to exceed one year. 10 CFR 35.632(g) requires that a record be maintained of the full calibration of each teletherapy unit source for the duration of use of the teletherapy unit source. The record must include, among other things: the manufacturer's name, the model number and serial number of both the teletherapy unit and the source; the model numbers and serial numbers of the instruments used to calibrate the unit; a determination of the coincidence of the radiation field and the field indicated by the light beam indicating device; an assessment of timer linearity and constancey; the calculated on—off error; the estimated accuracy of each distance measuring or localization device; and the signature of the teletherapy physicist.

Contrary to the above, as of August 21, 1989, records of the annual full calibrations of the teletherapy unit for September 1987, May 1988, and March 1989 did not include some of the information required by 10 CFR 35.632(g). Specifically, the records did not include:

1. The manufacturer's name, the model number and serial number of both the teletherapy unit and the source;

2. The model numbers and serial numbers of the instruments used to calibrate the unit;

3. A determination of the conincidence of the radiation field and the field indicated by the light beam localizing device;

4. an assessment of timer linearity and constancy;

5. The calculated on—off error;

6. The estimated accuracy of each distance measuring or localization device; and

7. The signature of the teletherapy physicist.

This is a repeat violation.

I. 10 CFR 35.634(a) and (d) require that safety and output spot checks be performed once in each calendar month for each teletherapy unit used for medical use. 10 CFR 35.634(f) requires that a record be maintained of each monthly output and safety spot check performed of the teletherapy system. The record must include, among other things: the manufacturer's name, the model number and serial number of both the teletherapy unit and the source; the model numbers and serial numbers of the instruments used to measure the output of the teletherapy unti; determination of the coincidence of the radiation field and the field indicated by the light beam indicating device; the calculated on-off error; the difference between the measured output and the anticipated output; notations indicating the operability of each entrance door interlock; each electrical and mechanical stop; each beam condition indicator light; the viewing system; and the signature of the person performing the monthly spot check.

Contrary to the above, as of August 21, 1989, records of teletherapy system monthly output and safety spot checks performed between January 1988 and July 1989 (a period of 18 months) did not include the following information:

1. The manufacturer's name, the model number and serial number of both the teletherapy unit and the source;

2. The model numbers and serial munbers of the instruments used to measure the output of the teletherapy unit;

3. A determination of the coincidence of the radiation field and the field indicated by the light beam indicating device;

4. The calculated on-off error;

5. The difference between the measured output and the anticipated output;

6. Notations indicating the operability of each entrance door interlock;

7. Each electrical and mechanical stop;

8. Each beam condition indicator light;

9. The viewing system; and

10. The signature of the person performing the monthly spot check.

This is a repeat violation.

J. 10 CFR 35.615(d)(3) requires that the permanent radiation monitor installed in each teletherapy room be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.

Contrary to the above, as of July 21, 1989, the permanent radiation monitor in the teletherapy room was not checked with a dedicated check source for proper operation any day before the teletherapy unit was used for treatment of patients.

K. 10 CFR 35.647(a) requires that each teletherapy unit be fully inspected and serviced during teletherapy source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the source exposure mechanism.

Contrary to the above, as of July 21, 1989, the teletherapy unit was not fully inspected and serviced at five year intervals to assure proper functioning of the source exposure mechanism. The last full inspection and servicing of the teletherapy unit was performed during a source replacement on September 8, 1982.

These violations have been classified in the aggregate as a Severity Level III problem (Supplement VI)

Civil Penalty—$6,250 (assessed equally among the 14 violations)

2. *Summary of Licensee Response Requesting Mitigation of the Proposed Civil Penalty for the Violation in Section I of the Notice of Violation*

Summary of Licensee Response

With respect to the violation in Section I of the Notice (involving the failure to implement emergency procedures) the licensee admits the violation, but states the civil penalty proposed for this violation is erroneous and unwarranted. The licensee asserts that the basis for the civil penalty appears to be predicated on the NRC's contention that senior licensee management was never

informed of the incident, and that management did not take immediate corrective actions following the incident. The licensee denies any assertion by the NRC that senior management was not informed of the incident or that corrective actions were not taken. The licensee states that their corrective actions in reponse to the incident included (but were not limited to): (1) An investigation of the incident by the Radiation Safety Officer (RSO); (2) a presentation by the RSO regarding the incident to the Occupational Health, Safety and Fire Protection Committee (which was attended by senior licensee management); (3) a meeting between the RSO, the Chief of Radiology and the consulting Physicist to discuss the incident; and (4) a review of the incident by the Hospital Quality Assurance Office. Therefore, the licensee argues that, because the civil penalty appears to be predicated on the inaccurate contention that this incident was not brought to the attention of senior management, imposition of a civil penalty for this violation is unwarranted.

NRC Evaluation of Licensee Response

The NRC disagrees with the licensee's assertion that the civil penalty for this violation was predicated on the failure to bring the incident to the attention of hospital management or to undertake corrective actions. As set forth in the letter transmitting the Notice of Violation and Proposed Imposition of Civil Penalties, although the NRC was concerned that the incident was not brought to the attention of senior medical center management, this violation was classified at Severity Level III and the base civil penalty was proposed because the incident created a substantial potential for a significant misadministration at the licensee's facility, and not because of the failure to inform senior management, or to effect corrective actions. However, the licensee's corrective actions, including the promptness and extent to which senior management was involved in the followup to the incident, were evaluated by the NRC in determining whether to adjust the base civil penalty amount for this violation.

In accordance with Section V.B.2 of the Enforcement Policy, the promptness with which and the extent to which the licensee takes corrective actions may result in up to a 50% increase or decrease in the base civil penalty. Since corrective actions are always required whenever a regulatory violation occurs, mitigation of a civil penalty based on this factor must necessarily consider the comprehensiveness of the licensee's actions. In this case, the licensee's corrective actions (including the level of management involvement in the actions), were considered adequate to remedy the violation. However, they were not considered sufficiently comprehensive to warrant mitigation of the base civil penalty because the Radiation Safety Committee (which should play an integral role in reviewing and assessing radiation related incidents) did not participate in, or independently assess the consequences of, this incident. Further, the Medical Center Director, your most senior manager, was never made aware of this incident or its significance until the NRC inspector discussed the incident during the inspection exit meeting on July 12, 1989 (approximately 9 months after the incident). Therefore, the NRC concludes that no adjustment to the base civil penalty for this violation is warranted.

3. *Summary of Licensee Response Requesting Reconsideration of the Severity Level for the Violations in Section II of the Notice and Requesting Mitigation of the Civil Penalty Proposed for Violations II.H and II.I*

Summary of Licensee Response

In its response, the licensee does not deny the violations in section II of the Notice, but asserts that the violations consist entirely of Severity Level IV and V violations which, for the most part, were trivial in nature and were caused by extenuating circumstances. As such, the licensee asserts that these violations normally do not warrant monetary penalties. Further, the licensee specifically asserts that the civil penalty imposed for Violation II.H (involving the failure to maintain complete records of annual teletherapy unit calibrations) and Violation II.I (involving the failure to maintain complete records of teletherapy system monthly output and safety spot checks) appear excessive and requests that the civil penalty imposed for these violations be reduced. With respect to Violation II.H, the licensee maintains that, although certain elements of the annual calibration reports were omitted from the records, the important elements relating to the proper functioning and safety of the unit were documented in accordance with requlatory requirements. With respect to Violation II.I, the licensee admits that no evaluation of the difference between the teletherapy unit's measured output and its anticipated output was included in the records. However, the licensee states that records provided to the NRC subsequent to the inspection supplied the remainder of the required information, and that, in view of the fact that its records supported the conduct of the monthly spot checks, the civil penalty for these violations should be reduced.

NRC Evaluation of Licensee Response

The NRC agrees with the licensee's assertion that the violations in Section II of the Notice, if considered individually, would be of minor safety significance. However, when considered collectively, the number of violations, as well as the fact that several of the violations were either repetitive or involved multiple examples, clearly demonstrates a lack of attention toward licensed responsibilities and a lack of adequate management oversight of licensed activitied by the Radiation Safety Officer, the Radiation Safety Committee and Hospital management. Therefore, the NRC maintains that the violations were appropriately classified in the aggregate at Severity Level III in accordance with section C.12 of Supplement IV of the Enforcement Policy.

With resepct to Violations II.H and II.I, the NRC agrees, based on the additional information provided to the NRC, that portions of the required annual calibration and monthly spot check records were completed. However, although partial compliance with a regulatory requirement may impact on the overall safety significance of the violations, it does not invalidate the fact that the requirements were, in part, violated. Furthermore, in assessing the significance of these violations the NRC did in fact, distinguish between a violation involving the actual failure to perfom the annual calibrations and monthly spot checks, and these violations, which involved the failure to adequately document the performance of the required tests. The failure to adequately document the calibration/tests is important because the NRC relies upon this documentation to determine whether the required calibrations/tests have been done. In addition, these violations provided additional examples of the lack of management oversight of licensed activities of this facility. Therefore, the NRC concludes that no mitigation of the civil penalty is warranted for Violations II.H and II.I, or for the other violations set forth in section II.

In addition, with respect to the Violation II.I, the NRC recognizes that subsequent to the inspection, the licensee provided sufficient documentation to establish that certain portions of the monthly spot check records were completed as required. Although the violation is not withdrawn because these records did not include the difference between the teletherapy system measured output and the anticipated output, the violation is amended by the Appendix to properly reflect the actual nature and extent of the violation.

4. *Restatement of Amended Violation II. I*

I. 10 CFR 35.634 (a) and (d) require that safety and output spot checks be performed once in each calendar month for each teletherapy unit used for medical use. 10 CFR 35.634(f) requires that a record be maintained of each monthly output and safety spot check performed of the teletherapy system. The record must include, among other things, the difference between the measured output and the anticipated output.

Contrary to the above, as of August 21, 1989, records of teletherapy system monthly output and safety spot checks performed between January 1988 and July 1989 (a period of 18 months) did not include the difference between the measured output and the anticipated output.

5. *NRC Conclusion*

The licensee provided sufficient information to the NRC to form a basis for amending (but not retracting) Violation II. I so as to properly reflect the nature and extent of the violation. However, the licensee did not provide a sufficient basis for reassessment of the severity level of the violations in sections I or II of the Notice, or for mitigation of the proposed civil penalties for these violations. Therefore, the NRC concludes that the proposed civil penalties of $2,500 and $6,250 should be imposed for the violations in section I and II of the Notice.

[FR Doc. 90-10080 Filed 4-30-90; 8:45am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Initial Approval.

Regulation S

No. 270–315

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval Regulation S that will provide clarification with respect to the extraterritorial application of the registration provisions of the Securites Act of 1933. The Regulation is not a form and would be assigned one burden hour for administrative purposes.

Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to:

Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6005

and

Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228 New Executive, Washington, DC 20503.

Dated: April 19, 1990.

Jonathan G. Katz,

Secretary.

FR Doc. 90–10084 Filed 4–30–90; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC 20549.

Initial Approval

Rule 144A

No. 270–58

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval Rule 144A which provides a safe harbor exemption from the registration requirements of the Securities Act of 1933 for resale of securities to specified quality institutional investors. The Rule is not a form but would cause reductions in the number of Forms S–1, S–2, S–3, S–4, S–11, S–18, F–1, F–2, F–3, F–4, 10–K, 10–Q, 8–K, 20–F and 6–K.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission's rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: April 25, 1990.

Jonathan G. Katz,

Secretary.

FR Doc. 90–10085 Filed 4–30–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27940; File No. SR–CSE–90–03]

Self Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Proposed Rule Change Relating to Arbitration

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 22, 1990, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to replace its current chapter IX, *Arbitration*, with the most current Uniform Code of Arbitration developed by the members of the Securities Industry Conference on Arbitration ("SICA").

[1] 15 U.S.C. 78s(b)(1) (1982).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose.* The purpose of the proposed rule change is to replace the Exchange's present chapter IX, Arbitration, with the most current Uniform Code of Arbitration developed by the members of SICA and utilized by the various national securities exchanges in administering their arbitration programs. The proposed rule change will assure that the Exchange's arbitration code is current and consistent with the Uniform Code of Arbitration.

2. *Statutory Basis for the Proposed Rule Change.* The Exchange believes the proposed rule change is consistent with the provisions of section 6(b) of the Act [2] in general and, in particular, furthers the objectives of section 6(b)(5) of the Act [3] in that it will promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

[2] 15 U.S.C. 78f(b) (1982).

[3] 15 U.S.C. 78f(b)(5) (1982).

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Dated: April 24, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10083 Filed 4-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27943; File No. SR-MCC-90-03]

Self-Regulatory Organizations; Midwest Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modification of Fees for Odd Lot Transactions

April 24, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 6, 1990, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) MCC proposes to modity its fee schedule for odd lot transactions, effective immediately, as follows: (*Additions Italicized;* [Deletions Bracketed])

Trade Recording

In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1,000 shares and larger when a participant exceeds 10,000 recorded trade sides each month. *No trade recording fees will be charged for odd lot trades (1 thru 99 shares) in excess of 5,000 recorded odd lot trade sides each month.* [In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1 thru 99 shares when a participant exceeds 1,000 recorded odd lot trade sides each month.]

(b) Not applicable.

(c) Not applicable.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The new Odd Lot Fees Schedule is designed to provide additional incentives for MCC participants to process increased odd lot transactions with MCC.

(b) The revised fee schedule is consistent with section 17(A) of the Act, as amended, in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it affects fees charged by MCC. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropppriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MCC. All submissions should refer to file number SR-MCC-90-03 and should be submitted by May 22, 1990.

[4] *See* 17 CFR 200.30-3 (1989).

For the Commission by the Division of Market Regulation, pursuant to delegated authority

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10086 Filed 4-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27941; File No. SR-NYSE-89-02 and Amendment No. 1]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing of Proposed Rule Change and Amendment No. 1 Thereto Containing Proposals Recommended by the Market Regulation Review Committee of the New York Stock Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder, [2] notice is hereby given that on February 24, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, and on March 12, 1990 the Exchange filed Amendment No. 1 [3] to the proposed rule change as described in Items I, II, and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In December 1985, the New York Stock Exchange's Board of Directors established the Market Regulation Review Committee ("Committee") to examine the structure of market trading regulation.[4] The Committee was charged with reviewing existing regulations to enable the Exchange, in a manner consistent with maintaining market integrity and protecting investors, to compete more effectively with its current and future competitors, to provide additional intra-market trading opportunities for all Exchange market participants, and to eliminate requirements that may no longer serve a meaningful regulatory purpose. The Exchange's Board of Directors has approved the recommendations discussed herein, and has authorized the filing of the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Commission has listed and summarized in section (A) below the specific Exchange rules that are the subject of the proposed rule change, while the Exchange itself has prepared summaries, set forth in sections (B) and (C) below, of other significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose.* The purpose of the proposed rule change is to amend the specific Exchange rules listed and summarized below. [5] The specific proposals fall within four broad categories, namely, "general auction market rules," "trading/order handling rules applicable to all members generally," "trading rules applicable to specialists," and "member proprietary and on-floor trading." In addiition, the Exchange has proposed two new rules: an "exchange automated order routing systems rule (Rule 123B)" and a "specialist booth wire policy."

a. General Auction Market Rules

i. Rule 61: Recognized Quotations. The Exchange proposes to amend the rule to clarify the bids or offers for odd-lots have no standing as recognized quotations in the trading crowd; how an order that includes one or more trading units and an odd-lot would be executed; and that special distributions would not be precluded by this rule.

ii. Rule 70: Below Bid—Above Best Offer. The proposed amendment would clarify that any bid or offer that is accepted results in a binding trade and that a bid (offer) which is at or above (below) an offer (bid) results in trade in an amount equal to the bid or offer, whichever is the smaller (greater) amount.

iii. Rule 75: Disputes as to Bids and Offers. The proposed rule change would establish that disputes are to be settled by Floor Officials, if not settled by the parties to the dispute, and clarifies how disputes are to be settled.

iv. Rule 76: "Crossing" Orders. The proposal would clarify that bids and offers must be clearly articulated in the trading Crowd before stock is crossed.

v. Rule 79: Bids and Offers—Binding. Rule 79 would be consolidated into Rule 70.

vi. Rule 79A.10: Request to Make Better Bid or Offer. The proposed amendment would extend the coverage of the rule's bid/offer procedures to all members.

b. Trading/Order Handling Rules Applicable to All Members Generally

i. Rule 13: Definition of Orders. The rule change would clarify the definition of "at-the-opening-only," "not held," and "switch order-contingent order"; and would clarify that a specialist must accept all types of orders, except "not held" orders, unless Floor Official approval is obtained and that all members should use due diligence in handling orders.

ii. Rule 60: Fire Quote Rule. The proposed new rule would reduce the number of "modes" in which quotes are disseminated, as well as make other related changes.

iii. Rule 91: Taking or Supplying Securities Named in Order. The amendment would extend the rule's agency law principles to any NYSE electronic order routing system.

iv. Rule 95: Discretionary Transactions. The Exchange is proposing to delete the rule's exceptions applicable to certain discretionary accounts, as well as make certain "housekeeping" changes to the rule.

v. Rule 120: Discretion to Employees—Forbidden. The Exchange is proposing to eliminate Rule 120 as unnecessary.

vi. Rule 123A: Miscellaneous Order Requirements. The Exchange is proposing certain "housekeeping" changes that would update and streamline the rule.

vii. Rule 128A: Publication of Transactions. The Exchange is proposing to amend the rule's reporting requirements to accommodate electronic books.

viii. Rule 128B: Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions. The amendment would require agreement of both the buyer and

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] Amendment No. 1 to File No. SR-NYSE-89-02 withdrew certain provisions of the Exchange's original rule filing and resubmitted them in a separate rule filing in order to expedite the Commission's consideration of the Committee's recommendations. *See* File No. SR-NYSE-90-10. *See also*, letter from Howard Kramer, Assistant Director, SEC, Division of Market Regulation, to Brian McNamara, Managing Director, NYSE, Market Surveillance Division, dated June 29, 1989.

[4] The Committee was originally given an 18-month chartered life, which was subsequently extended to 27 months, until March 31, 1988.

[5] The texts of the actual Exchange rules to be amended and complete descriptions of the proposed amendments are not set forth in the Exchange's original filing and in Amendment No. 1 thereto, both of which are available for inspection in the places specified in Item IV below.

seller and Floor Official approval prior to publishing corrections on the Tape.

c. Trading Rules Applicable to Specialists

i. Rule 94: Specialists' or Odd-Lot Dealers' Interest in Joint Accounts. The Exchange is proposing a technical, non-substantive amendment to the rule.

ii. Rule 104.16: Associate Specialists. The Exchange is proposing to delete this obsolete rule.

iii. Rule 104.17: Temporary Specialists. The amendment would require Floor Governor approval, rather than Floor Official approval, to authorize the appointment of a temporary specialist.

iv. Rule 104A.40: Short Sales. The Exchange is proposing to eliminate the rule's cross-reference to Rule 10a–1 under the Act [6] as unnecessary.

v. Rule 104A.50: LIFO Transactions. In light of automated Form 81 reporting by specialists, the Exchange is proposing to delete the rule's reporting requirements as unnecessary.

vi. Rule 115: Disclosure of Specialists' Orders Prohibited. The Exchange is proposing to modify the rule to provide that a specialist may provide information about buying or selling interest in the market at or near the prevailing quotation in response to a market "probe" by a member acting in the normal course of business on the Floor, but may not disclose the identity of any buyer or seller unless expressly authorized to do so.

d. Member Proprietary and On-Floor Trading

i. Rule 97: Limitation on Members' Trading Because of Block Positioning. The Exchange is proposing to amend the rule's definition of "block" to provide that a block shall be a quantity of stock having a market value of $500,000 or more.

ii. Rule 112.10: Orders Initiated "Off the Floor." The Exchange is proposing to eliminate the rule's prohibition against sending an off-Floor order to the Floor for two minutes following a print of 5,000 shares or more on the Tape.

iii. Rule 112.20: "On the Floor" and "Off the Floor." The Exchange is proposing to amend the rule's definitions and order routing prohibitions.

e. Exchange Automated Order Routing Systems Rule—Rule 123B

The Exchange is proposing to adopt new Rule 123B to codify all the policies and procedures applicable to Exchange trading systems under one umbrella rule.

f. Specialist Booth Wire Policy

The Exchange is proposing to adopt a policy governing use by specialists of booth wires located on the trading Floor.

2. *Statutory Basis for the Proposed Rule Change.* The Exchange believes the proposed rule change will promote just and equitable principles of trade and is consistent with the protection of investors and the public interest, as required by section 6(b)(5) of the Act.[7] The Exchange also believes that proposed rule change is consistent with other requirements in section 6(b)(5) in that it will assist in preventing fraudulent and manipulative acts and practices, and thereby promote just and equitable principles of trade. In addition, certain proposed amendments further promote the purposes of the Act in that they "foster cooperation and coordination with persons engaged in . . . settling . . . and facilitating transactions in securities." [8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In an Information Memo dated August 24, 1987, the Exchange summarized the recommendations of the Market Regulation Review Committee, and requested its members and member organizations to comment on them. The Exchange states that no written comments were received in response to this Information Memo with regard to any rule change being filed herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Dated: April 24, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–10082 Filed 4–30–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27939; File No. SR–NYSE–90–10]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Filing of Proposed Rule Change Containing Proposals Recommended by the Market Regulation Review Committee of the New York Stock Exchange

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 12, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change [3] as described in Items I, II,

[6] 17 CFR 240.10a–1 (1989).

[7] 15 U.S.C. 78f(b)(5) 1982).

[8] *Id.*

[9] *See* 17 CFR 200.30–3 (1989).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] In conjunction with its filing of File No. SR–NYSE–90–10, the NYSE also filed Amendment No. 1

Continued

and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In December 1985, the New York Stock Exchange's Board of Directors established the Market Regulation Review Committee ("Committee") to examine the structure of market trading regulation.[4] The Committee was charged with reviewing existing regulations to enable the Exchange, in a manner consistent with maintaining market integrity and protecting investors, to compete more effectively with its current and future competitors, to provide additional intra-market trading opportunities for all Exchange market participants, and to eliminate requirements that may no longer serve a meaningful regulatory purpose. The Exchange's Board of Directors has approved the recommendations discussed herein, and has authorized the filing of the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Commission has listed and summarized in section (A) below the specific Exchange rules that are the subject of the proposed rule change, while the Exchange itself has prepared summaries, set forth in sections (B) and (C) below, of other significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose.* The purpose of the proposed rule change is to amend the specific Exchange rules listed and summarized below.[5] The specific proposals fall within four broad categories, namely, "general auction market rules," "training/order handling rules applicable to all members generally," "trading rules applicable to specialists," and "member proprietary and on-floor trading."

a. General Auction Market Rules

i. Rule 64: Bonds, Rights and 100-Share-Unit Stocks. The Exchange proposes to amend the rule to eliminate inconsistencies in the calculation of settlement dates; codify the current practice that generally requires Floor Official approval for non-regular way trades; and specify that the Floor Official, in determining whether to grant approval of a non-regular way trade, should consider the reasonableness of the price of the transaction.

b. Trading/Order Handling Rules Applicable to All Members Generally

i. Rule 440B: Short Sales. The rule change would amend Rule 440B.15 to prevent short selling on the opening trade of an initial public offering, if the security's opening price is at or below the offering price.[6]

c. Trading Rules Applicable to Specialists

i. Rule 104: Dealings by Specialists. The Exchange is proposing that Rule 104 be amended to eliminate the trade-by-trade "market necessity test" for evaluating a specialist's proprietary transactions and replace it with a "reasonableness" standard that would state that a specialist is not to engage in proprietary dealings "unless such dealings are reasonable in relation to the specialist's responsibility to maintain a fair and orderly market." [7]

ii. Rule 104.10(7): "Clean Ups." The Exchange is proposing a modification to this rule to provide that all executable orders receive the "clean up" price when a specialist arranges for a member with a block-size order to be able to complete the balance of the order, or "clean up" the block and to delete the prohibition that specialists may not disclose the amount of stock that he and the book would be buying or selling in cleaning up the block.

iii. Rule 104.12: Specialists' Investment Accounts. The Exchange is proposing, in line with the proposal to modify the Rule 104 "necessity test" discussed above, that the "necessity test" for specialists' proprietary transactions that would create or add to an investment account position be deleted and replaced by a standard that allow such transactions if they are "reasonable" in relation to the specialist's responsibility to maintain a fair and orderly market and that current reporting requirements be replaced by a monthly reporting requirement.

iv. Rule 104.13: Investment Transactions. The Exchange is proposing that only transactions of more than 2,000 shares effected for accounts of the specialist's spouse and his children who reside in his household should be required to meet the "investment purposes" test; that the rule's "tick" tests be deleted, in line with the proposal to modify the Rule 104 "necessity test" discussed above, if covered investment transactions meet a "reasonableness" test in terms of the specialist's responsibility to maintain a fair and orderly market. The Exchange is also proposing that a provision contained in Rule 95.20 that prohibits specialists from originating orders in their specialty stocks for accounts over which they may have discretion be transposed to this rule.

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to File No. SR–NYSE–89–02, which withdrew certain provisions of File No. SR–NYSE–89–02 as filed originally and resubmitted them in File No. SR–NYSE–90–01, in order to expedite the Commission's consideration of the Committee's recommendations. See Amendment No. 1 to File No. SR–NYSE–89–02. See also, letter from Howard Kramer, Assistant Director, SEC, Division of Market Regulation, to Brian McNamara, Managing Director, NYSE, Market Surveillance Division, dated June 29, 1989.

[4] The Committee was originally given an 18-month chartered life, which was subsequently extended to 27 months, until March 31, 1988.

[5] The texts of the actual Exchange rules to be amended and complete descriptions of the proposed amendments are set forth in the Exchange's filing, which is available for inspection in the places specified in Item IV below.

[6] Under separate cover, the Exchange is petitioning the Commission to issue an interpretation under Rule 10a–1 under the Act, 17 CFR 240.10a–1, that the opening trade on the Exchange of a security being distributed in an initial public offering be deemed on a "zero minus" tick if the opening trade is at the offering price, or on a "minus" tick if the opening trade is below the offering price. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated February 24, 1989.

[7] Under separate cover, the Exchange is petitioning the Commission to delete the "necessity test" from Rule 11b–1 under the Act, 17 CFR 240.11b–1. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated February 24, 1989.

[7] Under separate cover, the Exchange is petitioning the Commission to delete the "necessity test" from Rule 11b–1 under the Act, 17 CFR 240.11b–1. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, dated February 24, 1989.

v. Rule 113: Specialists' Public Customers. The Exchange is proposing to revise the rule's order identification requirements, as stated in Rule 113(b), to track the above-mentioned changes to Rule 104.13, regarding investment transactions of more than 2,000 shares for specified parties associated with the specialist. The proposal also would amend Rule 113(c) and delete Rule 113.10 to provide that the current reporting requirements in regard to transactions in specialty stocks for accounts carried by a specialist organization be simplified and aggregated, and that reporting to the Exchange be on a monthly rather than weekly basis.

vi. Rule 116.30: Restrictions on "Stopping" Stock. The Exchange is proposing to amend the rule to permit a specialist to grant a stop (as to both systematized and manual orders) where the quotation spread is only the minimum variation of trading, provided he obtains the approval of Floor Officials to do so.

d. Member Proprietary and On-Floor Trading

i. Rule 107: Registered Competitive Market Makers ("RCMMs"). The Exchange is proposing to amend Rule 107(2)(a) to: specify an aggregate minimum capital requirement of $100,000 for an RCMM, inclusive of any and all other applicable federal and/or Exchange capital requirements; amend Rule 107(3) to provide that an RCMM's withdrawal of his registration as such becomes effective immediately upon his giving notice to the Exchange; amend Rule 107B(6) to permit an RCMM to trade on the side of an imbalance in a stock on an opening or reopening if he or she is liquidating a position he or she acquired on the Floor as an RCMM; adopt new Rule 107B(7) to incorporate a policy that RCMMs be required to respond, on a monthly average basis, to at least one market imbalance "call-in" as disseminated electronically on the Floor, and provide that an RCMM would not be required to respond to more than three call-ins by individual Floor brokers, or by Floor Officials, during any trading session; amend Rule 107.10(ii)(B) to permit an RCMM to purchase stock or establish or increase a position on a zero plus tick, on the offer if the quotation spread is only the minimum variation permitted, regardless of the previous day's closing price; amend Rule 107.10(C) to delete reference to the specialist's participation with respect to the aggregated 50% limitation; amend Rule 107.30 to eliminate a requirement that RCMMs report instances when they trade along with a specialist; and delete Rule 107.60 as unnecessary in light of the other RCMM call-in provisions in Rule 107.

ii. Rule 109: Agency Facilitation Traders ("AFTs"). The Exchange is proposing to create a new category of Floor trader called an AFT who would be permitted to initiate an order on the Floor to facilitate the single-price execution of an order that he is handling as agent. Thus, the AFT would be able to fill the balance of an order so that the entire order can be executed at one price. The AFT would be required to trade in this manner if he has guaranteed single-price executions to customers in the normal course of business, or has offered such a guarantee to a particular customer on a case-by-case basis.

An AFT would be permitted to offer this service to his customers on orders of 5,000 shares or less. Before the AFT may trade for his own account, at least 100 shares of the order must be executed at the prevailing bid or offer, and there must be no other market interest in trading at this price. The AFT must follow auction market crossing procedures in effecting his proprietary trade. An AFT would not be required to yield to other orders when liquidating a position he acquired as an AFT. An AFT would have to segregate his trades as an AFT in a separate account, meet a $100,000 minimum net capital requirement, and be subject to NYSE recordkeeping and reporting requirements.

The Exchange is seeking approval to implement new Rule 109 on a one-year pilot basis so as to gain practical experience with the overall viability of the AFT concept. In addition, the Exchange is requesting the Commission to determine, pursuant to its authority under section 11(a)(1)(H) of the Act,[8] that transactions by a member acting as an AFT pursuant to Rule 109 are consistent with section 11(a)(1) of the Act,[9] the protection of investors, and the maintenance of fair and orderly markets.

iii. Rule 110: Congregating in, Dominating the Market and Effecting Purchases or Sales in Orderly Manner. The Exchange is proposing to delete Rule 110.10 as unnecessary, given the relatively small number of Competitive Traders ("CTs") active on the Floor and the low level of their overall trading activity.

iv. Rule 111: Competitive Traders. The Exchange is proposing to require that CTs must establish and maintain minimum capital of $100,000, including all other applicable federal and Exchange capital requirements.

v. Rule 112: Restrictions on Competitive Traders. The Exchange is proposing to amend Rule 112(a) to provide that a CT may effect "zero plus" tick purchases on the offer under certain limited conditions; and amend Rule 112(d) to reduce the CT's 75 percent stabilization percentage requirement to 50 percent.

2. *Statutory Basis for the Proposed Rule Change.* The Exchange believes the proposed rule change will promote just and equitable principles of trade and is consistent with the protection of investors and the public interest, as required by section 6(b)(5) of the Act.[10] The Exchange also believes the proposed rule change is consistent with other requirements in section 6(b)(5) in that it will assist in preventing fraudulent and manipulative acts and practices, and thereby promote just and equitable principles of trade. In addition, certain proposed amendments further promote the purposes of the Act in that they "foster cooperation and coordination with persons engaged in * * * settling * * * and facilitating transactions in securities."[11]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In an Information Memo dated August 24, 1987, the Exchange summarized the recommendations of the Market Regulation Review Committee, and requested its members and member organizations to comment on them. The Exchange states that no written comments were received in response to this Information Memo with regard to any rule change being filed herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[8] 15 U.S.C. 78k(a)(1)(H) (1982).

[9] 15 U.S.C. 78k(a)(1) (1982).

[10] 15 U.S.C. 78f(b)(5) (1982).

[11] *Id.*

publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 22, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: April 24, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10087 Filed 4-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17453; 812-7434]

Allied Capital Corporation II; Notice of Application

April 23, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Allied Capital Corporation II ("Allied II") Allied Investment Corporation II ("AI II"), and Allied Financial Corporation II ("AF II") (AI II and AF II collectively, the "Subsidiaries").

RELEVANT 1940 ACT SECTIONS: Order requested under sections 6(c), 57(c), 17(d) and 17(b) and Rule 17d-1 for exemptions from the provisions of sections 12(d)(1), 17(a), 17(d), 18(a), 19(b), 57(a), and 61(a).

SUMMARY OF APPLICATION: Applicants seek an order to permit Allied II (a) to create and own the securities of the Subsidiaries which will operate as licensed small business investment companies, (b) to engage in certain joint transactions involving either or both of the Subsidiaries and to co-invest with the Subsidiaries in portfolio companies, (c) to cause the Subsidiaries to pay dividends and make other distributions to Allied II, including long-term capital gains distributions, and (d) to meet modified asset coverage requirements on a consolidated basis with the Subsidiaries.

FILING DATE: The application was filed on November 29, 1989 and amended on January 26, 1990, and on March 22, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 15, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, 1666 K Street, NW., Washington, DC 2006.

FOR FURTHER INFORMATION CONTACT: Barbara Chretien-Dar, Staff Attorney, at (202) 272-3022, or Stephanie Monaco, Branch Chief, at (202) 272-3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applciants' Representations

1. Allied II is a closed-end, management investment company organized under the laws of the District of Columbia on March 8, 1989. It has elected to be regulated as a business development company ("BDC") under section 54 of the 1940 Act. The investment objective of Allied II is long-term capital appreciation through venture capital investments in small, lesser-known companies ("Portfolio Companies"). The initial public offering of Allied II's shares commenced on October 26, 1989, pursuant to a Registration Statement on Form N-2 under the Securities Act of 1933. As of December 31, 1989, Allied II had total assets of $92.8 million and approximately 4,500 shareholders of record. Allied II's shares are traded in the over-the-counter market.

2. Allied II has established two wholly-owned subsidiaries, AI II and AF II, organized under the laws of the District of Columbia.[1] It is expected that AI II will be licensed by the Small Business Administration ("SBA") to operate as a small business investment company ("SBIC"), and that AF II will be licensed by the SBA to operate as a MESBIC (an SBIC engaged in making loans to qualified small businessess). Allied II will transfer to AI II and AF II cash and securities in exchange for all outstanding capital stock of AI II and AF II. Allied II intends to retain a majority of its assets rather than transferring most of them to the Subsidiaries and will make venture capital investments directly as well as through AI II and AF II. Allied II believes that this "two-tier" arrangement is in the best interest of its shareholders because many investment opportunities would be unavailable if Allied II were to conduct the SBIC activities directly because of SBA regulations.

3. Allied II may from time to time make additional investments in its Subsidiaries either as contributions to capital, purchases of additional stock, or loans. The Subsidiaries will not purchase or otherwise acquire any of the capital stock of Allied II. In addition, the Subsidiaries will from time to time pay dividends and make other distributions to Allied II with respect to its investment in the Subsidiaries' stock, including capital gains dividends, subject to the requirements of the Small Business Investment Act of 1958 and regulations thereunder. Allied II intends to cause the Subsidiaries to qualify and

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[12] *See* 17 CFR 200.30-3 (1989).

[1] Under a pending no-action request to establish a simplified registration procedure and consolidated reporting system, the Subsidiaries will register under the 1940 Act on Form N-5 and will incorporate by reference the information contained in their parent's registration statement. Allied II, for its part, will include in its quarterly reports under the Securities Exchange Act of 1934 consolidated financial statements including the assets, liabilities, and results of the Subsidiaries.

elect to be taxed as "regulated investment companies" and as such they will be required to pay out as dividends substantially all of their "investment company taxable income" as defined by Section 852 of the Internal Revenue Code (the "Code"). Allied II also intends to continue to qualify and be taxed as a regulated investment company as defined by the Code. The Subsidiaries may make loans or other advances to Allied II, other than on account of purchases of their stock. Allied II and its Subsidiaries may also from time to time invest jointly or separately in the same or different securities of an issuer. Allied II or its Subsidiaries may also purchase all or a portion of portfolio investments held by the other. In addition, Allied II believes that the Subsidiaries should have the authority to issue and have outstanding the maximum amount of borrowing permitted under the Small Business Investment Act and section 18(k) of the 1940 Act.

Applicants' Legal Analysis and Conclusions

4. Rule 60a–1 under the 1940 Act exempts from section 12(d)(1)(A) and (C) of the 1940 Act the acquisition by a BDC of securities of an SBIC operated as a wholly-owned subsidiary of the BDC. Accordingly, the initial transfer of assets from Allied II to the Subsidiaries in return for the Subsidiaries' capital stock is exempt from the provisions of section 12(d)(1) (A) and (C). However, the making of loans or advances by the Subsidiaries to Allied II could violate Section 12(d) if such transactions are viewed as purchases by the Subsidiaries of Allied II's securities. As investment companies, the Subsidiaries are subject to section 12 and an exemption is necessary to permit them to make loans to their parent. Since AI II and AF II are wholly-owned subsidiaries, and since Allied II has agreed that it will exercise its rights as shareholder only as directed by Allied II shareholders, the relationship of the Allied II shareholders to the SBIC activities of the Subsidiaries will be no different than if carried out by Allied II. Accordingly, Applicants argue that the objectives of section 12(d)(1) will not be compromised by the proposed loans and advances.

5. Section 17(a) may prohibit some of the proposed transactions because Allied II will be an affiliated person of its two investment company subsidiaries by virtue of its ownership of all of their voting stock. By the same token, the Subsidiaries will be affiliated persons of a BDC because they are controlled by Allied II, and, therefore, the same transactions may be subject to the substantially identical provisions of section 57(a) of the 1940 Act. Portfolio companies may also be affiliated persons of Allied II or the Subsidiaries because five percent or more of such portfolio company's voting securities may be held by Allied II or the Subsidiaries. Accordingly, any exchange of securities between Allied II and a Subsidiary and between any one or all of them and their portfolio companies could constitute an affiliated transaction prohibited by section 17(a) and 57(a) of the 1940 Act. However, were Allied II operating as a single company, transactions with controlled or non-controlled portfolio companies would be permissible without SEC approval by virtue of Rule 57b–1 under the 1940 Act. Similarly, transactions between BDCs or investment companies and their downstream affiliates are exempt from the prohibitions of section 57(a) and 17(a) of the 1940 Act by virtue of Rule 17a–6. Therefore, Applicants believe that the Subsidiaries should be permitted to invest in downstream affiliates of Allied II and vice versa to the extent permitted under the 1940 Act as if Applicants were a single company.

6. Section 17(d) and Rule 17d–1(a) may prohibit transactions whereby Allied II and either or both Subsidiaries invest separately or jointly in the securities of the same issuer. Section 57(a)(4) applies identical provisions to Allied II as a BDC. Since Allied II and the Subsidiaries would be affiliated persons, any investments by Allied II in the portfolio companies of a Subsidiary and investments by a Subsidiary in the portfolio companies of Allied II may be prohibited by Sections 17(d), 57(a)(4) and Rule 17d–1. Again, were Allied II and the Subsidiaries operating as one combined investment company, Rule 17d–1(d)(5) under the 1940 Act would exempt transactions between them and their downstream affiliates from section 17(d), and if they were one combined BDC, such transactions would be exempted from section 57(a) by Rule 57b–1 of the 1940 Act. Applicants argue that it is reasonable and fair to exempt Allied II and its Subsidiaries from the provisions of section 17(d) of the 1940 Act and Rule 17d–1 thereunder to the extent that Allied II would not be subject to such provisions had it decided to operate as a single company.

7. Allied II and its Subsidiaries are subject to the asset coverage requirements of Section 18(a) (as modified by section 61(a) with respect to Allied II). Section 18(k) provides an exemption from the asset coverage provisions of Section 18(a) for SBICs. It is arguable that Allied II must comply with the asset coverage requirements of section 18(a) and 61(a) on a consolidated basis because it may be deemed to be an indirect issuer of senior securities with respect to the Subsidiaries' debt. This would mean that Allied II would have to treat as its own all liabilities of the Subsidiaries, including those that would otherwise be exempt from the provisions of section 18(a)(1) (A) and (B) by virtue of section 18(k). The net effect of applying the asset coverage requirements on a consolidated basis, if relief were not obtained, could be to restrict the ability of the Subsidiaries to obtain the kind of financing that would be available if Allied II were to conduct the SBIC operations, directly. Accordingly, Allied II and the Subsidiaries seek an exemption to permit the issuance of senior securities subject to certain conditions as summarized in condition 5.

8. The Subsidiaries may pay dividends and make other distributions to Allied II on a regular basis, as required by Allied II, that may include distributions of long-term capital gains within the meaning of section 19(b). Applicants believe that permitting such distributions by the Subsidiaries to Allied II more often than once a year will permit Allied II to manage more efficiently its internal cash flow and could result in administrative savings.

9. Applicants argue that the issuance of the exemptive order requested is clearly within the authority of the SEC under sections 6(c), 57(c), 17(b) and 17(d) and Rule 17d–1. If the requested exemptive order is granted, Allied II will be able to achieve several goals that would be both beneficial to its shareholders and in the public interest. The proposed transactions are intended to permit Allied II to engage in a broader scope of operations than SBICs, while at the same time obtaining the benefits available through the SBIC program for its shareholders. The formation of the wholly-owned Subsidiaries to operate as SBICs would be in the best interests of Allied II's shareholders. The proposed transactions are also consistent with the Congressional intent and the policies underlying the 1940 Act and the Small Business Investment Incentive Act of 1980 (the "1980 Act"). The exemptions requested herein coincide with the principal purpose of the 1940 Act, as amended by the 1980 Act, to remove regulatory burdens on venture capital companies while assuring adequate protection of the interests of investors in such companies.

10. The position of Allied II's shareholders basically will be the same

whether Allied II conducts the SBIC activities itself or through wholly-owned subsidiaries. Since AI II and AF II will be wholly-owned subsidiaries of Allied II and since, in all material respects, its shareholders will have the same rights with respect to the Subsidiaries that they have with respect to Allied II, the shareholders of Allied II will gain the opportunity to share in Allied II's successes as a BDC not limited to SBIC investments.

Applicants' Conditions

If the requested order is granted, Applicants agree to be subject to the following conditions:

1. Allied II will at all times own and hold beneficially and of record all of the oustanding voting stock of AI II and AF II; AI II and AF II will at all times be wholly-owned by Allied II and will therefore never have public shareholders.

2. The Subsidiaries will have the same fundamental investment policies as Allied II, and neither will engage in any of the activities described in section 13(a) of the 1940 Act unless so authorized by a vote of the majority of the outstanding voting securities of Allied II.

3. No person will serve or act as an investment adviser to AI II or AF II subject to section 15 of the 1940 Act, unless shareholders and directors of Allied II have given the necessary approval.

4. No person shall serve as a director of AI II or AF II who shall not have been elected as a director of Allied II at its most recent annual meeting.

5. Allied II and the Subsidiaries may issue senior securities to the following extent:

Allied II and the Subsidiaries may issue and sell to banks, insurance companies, and other financial institutions their secured or unsecured promissory notes, or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, *Provided* That: (i) such notes or evidences of indebtedness are not intended to be publicly distributed, (ii) such notes or evidences of indebtedness are not convertible into, exchangeable for or accompanied by any options to acquire any equity security (except that, with respect to Allied II, these restrictions shall apply only to the extent they are applicable generally to BDCs), and (iii) immediately after the issuance or sale of any such notes or evidences of indebtedness, Allied II and the Subsidiaries on a consolidated basis, and Allied II individually, shall have 200% asset coverage, except that, in determining the asset coverage on a consolidated basis, the Subsidiaries' assets and borrowings pursuant to section 18(k) shall be excluded.[2]

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10088 Filed 4-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17455; 811-4472]

DBL Institutional Trust; Application for Deregistration

April 23, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

Applicant: DBL Institutional Trust.

Relevant Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Date: The application on Form N-8F was filed on December 6, 1988.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 1990 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust and an open-end diversified management investment company registered under the Act. On November 14, 1985, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act under the name of BT Investment Trust. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement became effective on September 26, 1986, and applicant's initial public offering commenced on that same date. On September 7, 1988, applicant changed its name to DBL Institutional Trust.

2. At a meeting held on November 17, 1988, applicant's board of trustees adopted a plan of liquidation. Pursuant to the plan of liquidation, applicant distributed all of its cash except for $100,000 to its securityholders in complete redemption of the securityholders' shares. Each securityholder received a dollar amount per share representing the net asset value per share on the distribution date. At the time of the application 11,192 shares remained outstanding. These shares belonged to a single shareholder and were valued at $100,000.

3. Applicant paid all expenses, fees and other charges with respect to the liquidation. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10089 Filed 4-30-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17454; 811-4292]

Pacific Horizon Tax-Exempt Money Market Portfolio, Inc.; Application for Deregistration

April 23, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

[2] The Subsidiaries will only issue such senior securities as are exempt from section 18(a) under section 18(k) of the 1940 Act.

Applicant: Pacific Horizon Tax-Exempt Money Market Portfolio, Inc.

Relevant Act Section: Section 8(f).

Summary of Application: Applicant seeks an order declaring that it has ceased to be an investment company.

Filing Dates: The application on Form N-8F was filed on March 22, 1990.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 21, 1990 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 156 W. 56th Street, Suite 1902, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Maryland corporation and an open-end diversified management investment company registered under the Act. On June 29, 1984, applicant filed a notification of registration on Form N-8A pursuant to section 8(a) of the Act. On the same date, applicant filed a registration statement on Form N-1A under the Securities Act of 1933. The registration statement became effective on March 1, 1985, and applicant's initial public offering commenced on the same date.

2. After a series of meetings, the last of which was held on July 21, 1989, applicant's board of directors adopted a plan of reorganization under which the applicant would transfer all of its assets and liabilities to a corresponding "shell" portfolio of Pacific Horizon Funds, Inc., a registered open-end management investment company (File No. 811-4293), in exchange for shares in the new portfolio, and then make a liquidating distribution to its shareholders of a like number of full and fractional shares of the new portfolio. Applicant's shareholders approved this plan by vote at an adjourned special meeting held on January 18, 1990.

3. The exchange of shares between applicant and Pacific Horizon Funds, Inc. took place on January 19, 1990. The liquidating distribution of the new shares to the applicant's shareholders took place shortly thereafter.

4. The share registration expenses incurred in connection with the reorganization were assumed by Pacific Horizon Funds, Inc. One-third of the other reorganization expense was borne by the applicant, Pacific Horizon Funds, Inc., and the other funds which were parties to the reorganization agreement. The other two-thirds of the expenses were borne by the Concord Holding Corporation, applicant's administrator, and the Security Pacific National Bank, applicant's investment advisor.

5. As of the time of filing the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-10090 Filed 4-30-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Grand Rapids, MI

The Small Business Administration, Region V Advisory Council, located in the geographical area of Detroit, will hold a public meeting at 9:30 a.m. Tuesday, May 15, 1990 at the Amway Grand Plaza Hotel in Grand Rapids, Michigan to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Raymond L. Harshman, District Director, U.S. Small Business Administration, 477 Michigan Avenue, room 515, Detroit, Michigan 48226-313/226-7240.

Dated: April 23, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-1004 Filed 4-30-90; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council Meeting; Madison, WI

The Small Business Administration Region V Advisory Council, located in the geographical area of Madison, will hold a public meeting at 8 a.m. Friday, May 11, 1990, at the Marc Plaza Hotel, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call C.A. Charter, District Director, U.S. Small Business Administration, suite 212 East Washington Avenue, room 213, Madison, Wisconsin 53703, (608) 267-5205.

Dated: April 23, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-10044 Filed 4-30-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 90-027]

National Offshore Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I), notice hereby is given of a meeting of the National Offshore Safety Advisory Committee (NOSAC). The meeting will be held on Wednesday, August 1, 1990, in room 2230, DOT Headquarters (NASSIF Building). The meeting is scheduled to run from 8 a.m. to 4 p.m. Attendance is open to the public. The agenda follows:

1. Subcommittee Reports

(a) Subchapter W
(b) Vessel Tonnage
(c) MODU Code Revision
(d) Drug Testing

2. Other Issues to be Discussed

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify

the NOSAC Executive Director no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written materials should be submitted to the Executive Director no later than July 20, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Jo Pensivy, Executive Director, National Offshore Safety Advisory Committee (NOSAC), room 2414, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1406.

Dated: April 20, 1990.

J. D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-97178 Filed 4-30-90; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Approval of Noise Compatibility Program, Phoenix Sky Harbor International Airport, Phoenix, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Phoenix, Arizona under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On November 17, 1988 the FAA determined that the noise exposure maps submitted by City of Phoenix under part 150 were in compliance with applicable requirements. On April 2, 1990 the Assistant Administrator for Airports approved the Phoenix Sky Harbor International Airport noise compatibility program. Fourteen (14) of the nineteen (19) recommendations of the program were approved. No Action was taken on five (5) noise abatement recommendations.

EFFECTIVE DATE: The effective date of the FAA's approval of the Phoenix Sky Harbor International Airport noise compatibility program is April 2, 1990.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP-611.2, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007. Telephone 213/297-1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Phoenix Sky Harbor International Airport, effective April 2, 1990.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a nose exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing noncompatible land uses around the airport and preventing the introduciton of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Assistant Administrator for Airports prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division in Hawthorne, California.

The City of Phoenix submitted to the FAA on December 30, 1987 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 1986 through June 1989. The Phoenix Sky Harbor International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on November 17, 1988. Notice of this determination was published in the Federal Register on November 29, 1988.

The Phoenix Sky Harbor International Airport study contains a proposed noise compatability program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1992. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on October 4, 1989 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180 day period shall be deemed to be an approval of such program.

The submitted program contained 19 proposed actions for noise mitigation both on and off the ariport. The FAA completed its review and determined

that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective April 2, 1990.

Outright approval was granted for 14 of the 19 specific program elements. Approved program measures included: Runway Flow Equalization (Informal Use Program); request airlines to use FAA Advisory Circular 91–53 noise abatement departure procedures for jet air carrier aircraft; request use of NBAA "close-in" departure procedures for general aviation business jet aircraft; continue existing engine runup policies; encourage airlines to utilize State III aircraft; encourage use of established published visual approaches during VFR conditions; creation of Noise Overlay Zoning; require Fair Disclosure Policy for residential property; recommend FAR part 150 study be adopted as part of Comprehensive Plans for cities of Phoenix and Tempe; establishment of Planning Commission Guidelines; soundproofing of residences and schools within 65 Ldn contour; continue Noise Monitoring and Update Noise Contour Maps; and monitor and respond to noise complaints.

No action was taken on the following five (5) Noise Abatement Measures: Revision to Standard Instrument Departures (SID) for Runways 26R and 26L; implment departure route over the Salt River for Runways 8R and 8L; standardization of helicopter final approach and departure routes; implement SID for aircraft departing new Runway 26L; and implement SID for aircraft departing new Runway 8R.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on April 2, 1990. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the City of Phoenix.

Issued in Hawthorne, California, on April 17, 1990.

James J. Wiggins,

Acting Manager, Airports Division Western-Pacific Region.

[FR Doc. 90–10025 Filed 4–30–90; 8:45 am]

BILING CODE 4910–13–M

Acceptance of Noise Exposure Maps for Ryan Airfield, Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Tucson Airport Authority for Ryan Airfield under the provisions of title I of the Aviation safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is April 5, 1990.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP–611.2, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone 213/297–1534.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Ryan Airfield are in compliance with applicable requirements of part 150, effective April 5, 1990.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of exising noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Tucson Airport Authority. The specific maps under consideration are Exhibits 2F and 2G in the submission. The FAA has determined that these maps for Ryan Airfield are in compliance with applicable requirements. This determination is effective on April 5, 1990. FAA's determination on an airport operation's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properites should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 6E25, 15000 Aviation Boulevard, Hawthorne, California 90261.

Tucson Airport Authority, 7005 South Plumer Avenue, Tucson, Arizona 85706.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on April 5, 1990.

Herman C. Bliss,

Manager, Airports Division, AWP–600.

[FR Doc. 90–10021 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review; Portland International Jetport Portland, ME

AGENCY: Federal Aviation Administration DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by the City of Portland, Maine, for Portland International Jetport, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Portland International Jetport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before September 23, 1990.

EFFECTIVE DATES: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is March 27, 1990. The public comment period ends on June 25, 1990.

FOR FURTHER INFORMATION CONTACT:

John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Portland International Jetport is in compliance with applicable requirements of part 150, effective March 27, 1990. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 23, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The City of Portland submitted to the FAA on December 27, 1988 a noise exposure map, descriptions, and other documentation which were produced during the Airprot Noise Compatibility Planning (part 150) Study at Portland International Jetport from November 1986 to November 1989. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Portland. The specific map under consideration is Figure 12.2, along with the supporting documentation in *Volume I:* Noise Exposure Map Documentation of the part 150 Study. The FAA has determined that the map for Portland International Jetport is in compliance with applicable requirements. This determination is effective on March 27, 1990. FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If question arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example; which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally receive the noise compatibility program for Portland International Jetport, also effective on March 27, 1990. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but the further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 23, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Portland International Jetport, Airport Manager's Office, 1001 Westbrook Street, Portland, Maine 04102

Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the

headings: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on Mary 27, 1990.

Vincent A. Scarano,

Manager, Airport Division, New England Region.

[FR Doc. 90-1001 Filed 4-30-90; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure May Notice; Receipt of Noise Compatibility Program and Request for Review; Burlington International Airport, Burlington, VT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by the City of Burlington, Vermont, for Burlington International Airport, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Burlington International Airport under part 150 in conjuction with the noise exposure map, and that this program will be approved or disapproved on or before September 23, 1990.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is March 27, 1990. The public comment period ends on June 25, 1990.

FOR FURTHER INFORMATION CONTACT:

John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE-602, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Burlington International Airport is in compliance with applicable requirements of part 150, effective March 27, 1990. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before September 23, 1990. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA a noise exposure map which meets applicable regulations and which depicts noncompatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or proposes, for the reduction of existing noncompatible uses, and for the prevention of the introduction of additional noncompatible uses.

The City of Burlington submitted to the FAA on January 30, 1990 a noise exposure map, descriptions, and other documentation which were produced during the Airport Noise Compatibility Planning (part 150) Study at Burlington International Airport from July 1987 to January 1990. It was requested that the FAA review this material as the noise exposure map, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the City of Burlington. The specific map under consideration is Figure 12.5, along with the supporting documentation in Volume I: Noise Exposure Map Docomentation of the part 150 Study. The FAA has determined that the map for Burlington International Airport is in compliance with applicable requirements. This determination is effective on March 27, 1990. FAA's determination on an airport operator's noise exposure map is limited to a finding that the map was developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program, or to find the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure map to resolve questions concerning, for example; which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted the map, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Burlington International Airport, also effective on March 27, 1990. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 23, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise

compatibility program are available for examination at the following locations:

Burlington International Airport, Office of the Director of Aviation, Airport Drive, South Burlington, Vermont 05401.

Federal Aviation Administration, New England Region, Airports Division, ANE–602, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT.**

Issued in Burlington, Massachusetts, on March 27, 1990.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 90–100 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–90–19]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 21, 1990.

ADDRESSES: Send comments on any petition in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on April 25, 1990.

Clara Thieling,

Acting Manager, Program Management Staff, Office of the Chief Counsel.

Petitions For Exemption

Docket No.: 26136
Petitioner: Air Methods Corporation International
Sections of the FAR Affected: 14 CFR 135.213, 135,219, and 135.225
Description of Relief Sought: To allow petitioner's pilots to make instrument flight rule instrument approach procedures at airports/ heliports that do not have an approved weather reporting source.

Docket No.: 26160
Petitioner: Massachusetts Institute of Technology, Lincoln Laboratory
Sections of the FAR Affected: 14 CFR 91.42(c)
Description of Relief Sought: To allow petitioner to operate its experimental category aircraft over a densely populated area in a congested airway.

Docket No.: 26162
Petitioner: American Airlines Maintenance and Engineering Center
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought: To allow petitioner an 18-month extension of the compliance date by which windshear equipment must be installed.

Docket No.: 26177
Petitioner: Mr. Richard S. Funderburgh
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to be a crewmember on an aircraft operating under part 121 after his 60th birthday

Docket No.: 26191
Petitioner: Northwest Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.358
Description of Relief Sought: To allow an extension of the compliance date by which windshear equipment must be installed.

Dispositions of Petitions

Docket No.: 24441
Petitioner: Northern Pacific Transport, Inc.
Sections of the FAR Affected: 14 CFR 91.31(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 4666 that allows petitioner to operate its McDonnell Douglas Model DC–6A and DC–6B series aircraft listed on petitioner's operations specifications at a 5 percent increased zero fuel and landing weight. *GRANT, April 23, 1990, Exemption No. 4666C.*

Docket No.: 25988
Petitioner: Soloy Dual Pac, Inc.
Sections of the FAR Affected: 14 CFR 21.19
Description of Relief Sought: To allow petitioner to obtain a supplemental type certificate for Cessna Caravan aircraft in which the existing engines have been replaced with single propeller, dual engine Soloy Dual Pacs. *GRANT, April 13, 1990, Exemption No. 5172*

[FR Doc. 90–10026 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

[Notice No. 2]

Proposed Establishment of a Federally Funded Research and Development Center (FFRDC)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its intentions to establish a Federally Funded Research Development Center (FFRDC) through the sponsorship of a not-for-profit entity of the MITRE Corporation. The FFRDC will be established in compliance with guidance of the Office of Federal Procurement Policy Letter No. 84–1 and the Federal Acquisition Regulation. The FFRDC activity will be supported through the FAA's current contract with the MITRE Corporation. The scope of the FFRDC effort will be governed by a Memorandum of Agreement and will include, as a minimum, support to: (1) The validation of proposed National Airspace System (NAS) operational requirements by the development of operational concepts and by the assessment of alternative feasible, technological approaches to meeting proposed requirements in cost-effective ways; (2) the conduct of analyses of the operations of the current and eventual systems, with special emphasis on the detailed operational implications of the various incremental steps in the transition to the eventual system; (3) the conceptual formulation, feasibility

determination, and prototype development of enhancements to the Air Traffic Control (ATC) System; (4) the conduct of engineering studies and ATC performance/capacity analyses during the development and acquisition phases of NAS hardware and software subsystems to determine the operational acceptability of contractor-proposed designs; (5) the development of operational test and interface requirements and the evaluation of test results to assure the operational acceptability of each phase of the ATC system, as it is augmented by developed subsystems; and (6) the periodic analysis and reporting on the effectiveness, efficiency, and safety of the operational ATC system.

DATES: Comments on this action must be received within 30 days after publication of this notice to be considered.

ADDRESSES: Comments may be mailed to the Federal Aviation Administration, Program Analysis Branch, APM–200, room 222, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Frengs, Technical Officer, 202–267–3026 or Brian Isham, Contracting Officer, 202–267–8987.

SUPPLEMENTARY INFORMATION: This notice is not a request for competitive proposals or statement of capabilities. This is the second of three announcements as per the guidance of OFPP Policy Letter No. 84–1.

Joseph M. Del Balzo,

Executive Director of System Development.

[FR Doc. 90–10020 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 167—Digital Avionics Software, Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given for the Special Committee 167—Digital Avionics Software Meeting, to be held June 6–8 in the Software Productivity Consortium, 2214 Rock Hill Road, Herndon, Virginia 22070, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) approval of the second meeting's minutes; (3) review and discuss EUROCAE WG–12 activities; (4) working group reports: (a) WG–1, Documentation Integration and Production, (b) WG–2, Systems Issues, (c) WG–3, Software Development, (d) WG–4, Software Verification, and (e) WG–5, Configuration Management and Quality Assurance; (5) review of new issues identified by the Chairman and task assignments not covered in working group reports; (6) working group sessions; (7) in plenary: (a) working group progress and (b) task assignments; (8) other business; and (9) date and place of next meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 25, 1990.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90–10022 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee Meeting; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. I), notice is hereby given for the Executive Committee Meeting, to be held May 24 in the RTCA Conference Room, One McPherson Square, 1425 K Street, SW., Suite 50, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of March 21 Executive Committee Meeting minutes; (3) executive director's report; (4) special committee activities report for March-April; (5) report of the fiscal and management subcommittee; (6) consideration for approval: (a) revised terms of reference, Special Committee 135—Environmental Conditions and Test Procedures for Airborne Equipment, (b) report, Special Committee 137—Airborne Area Navigation Systems (2D and 3D), (c) Change 7 to DO–185, Special Committee 147—Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, and (d) report, Special Committee 163—Unintentional or Simultaneous Transmissions that Adversely Affect Two-way Radio Communication; (7) consideration of proposals to establish new special committees; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 25.

Geoffrey R. McIntyre

Designated Officer.

[FR Doc. 90–10023 Filed 4–30–90; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 164—Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C. App. I), notice is hereby given for the Special Committee 164—Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment Meeting, to be held June 14–15 in the RTCA Conference Room, One McPherson Square, 1425 K Street, SW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks, (2) approval of the fifth meeting's minutes, (3) technical presentations, (4) review of task assignments from last meeting, (5) review of the second draft of the MOPS, (6) working group sessions, (7) task assignments, (8) other business, and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 25.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-10024 Filed 4-30-90; 8:45 am]

BILLING CODE 4910-13-M

Regional Highway Traffic Safety Administration

[Docket No. 90-07, Notice No. 01]

Critical Automated Data Reporting Elements

AGENCY: National Highway Traffic Safety Administration, (NHTSA), DOT.

ACTION: Notice and request for comment on proposed Critical Automated Data Reporting Elements for highway safety analysis (CADRE).

SUMMARY: This notice is being issued to announce a proposed list of Critical Automated Data Reporting Elements for Highway Safety Analysis (CADRE). NHTSA believes that if States would collect these data elements on Police Traffic Accident Reports and include them on automated databases, the uselfulness of these files in support of highway safety analysis would increase dramatically. This action reflects NHTSA's interest in addressing the analytic use of state highway safety data for improved data analysis. NHTSA requests comments on this proposal. Following the close of the comment period, NHTSA will publish a notice announcing completion of the final version of the CADRE.

DATES: Comments on this proposal are due no later than May 31, 1990.

ADDRESSES: Written comments should refer to the docket number of this notice and should be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Dennis E. Utter, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; phone 202/366-5351.

SUPPLEMENTARY INFORMATION

Section 1—Background

Government agencies, whether Federal, State, or local, need reliable information in order to perform the necessary functions of identifying problems, formulating solutions to these problems, defining policy, and evaluating programs. One of the critical areas for which all levels of government have responsibility is highway safety. Motor vehicle crashes are responsible for half of all accidental deaths. Each year, more than 45,000 lives are lost and hundres of thousands of persons are injured. The societal costs of motor vehicle crashes exceed $75 billion annually.

Complete and accurage data maintained in computerized data files are required to support the highway safety programs intended to reduce this toll. The data to support these programs come from a myriad of srouces, e.g., police accident reports, driver licensing files, vehicle registration records, highway records, EMS/hospital injury records, et.

Among the data sources needed to support highway safety program activities, the police accident report (PAR) is the most important. The PAR provides the basic information about traffic crashes which, when aggregated with data from other sources, forms the basis for all highway safety analyses.

The majority of analyses utilizing police reported accident data are directed towards one of two objectives:

- Identifying the need for, or assesing the effectiveness of, highway safety laws and programs intended to reduce the frequency and severity of motor vehicle crashes and injuries.
- Assessing the realtionship between vehicle and highway characteristics, crash propensity, and injury severity to support either the development of countermeasures or their evaluation.

Many improvements in the quality, quantity, and timeliness of police reported accident data have been realized since the passage of the Highway Safety Act of 1966. Despite these improvements, however, problems remain. Data are not uniform, making it difficult to compare program effectiveness across State lines. Important data are missing, greatly limiting the types of programs that can be evaluated. Further, errors in data coding and entry greatly reduce the usefulness of some States, data as a source of information for supporting their highway safety program efforts.

The National Highway Traffic Safety Administration believes that the usefulness of State automated accident files, for analysis in support of these two objectives, can be greatly improved if states would collect and automate a small number of uniform critical data elements. The purpose of this notice is to set forth for public comment NHTSA's proposed list of critical data elements. After comments are received and the list modified, as appropriate, NHTSA will encourage each State to collect and automate all of these critical data elements.

Most analyses using State automated accident files require data elements from a more extensive list. Most of these variables, in turn are collected and automated routinely by States. "Section 3—Other Variables Needed for Highway Safety Analysis" lists other key data elements that are collected by almost all States. While not discussed further in this document, the continued collection and automation of these proposed elements is essential. However, to encourage greater uniformity, NHTSA recommends that States follow the guidance contained in the ANSI D20.1-1979 Data Element Dictionary for these data elements where possible.

NHTSA's proposed critical data elements are referred to as the CADRE (Critical Automated Date Reporting Elements for Highway Safety analysis). Date elements in the CADRE have been selected for emphasis, because they are especially critical for conducting analyses of highway safety issues and because they are the data elements where the most serious deficiencies exist in collection and automation. The CADRE need not appear on the police accident report form as long as they are readily available in another data base and can be merged with automated data from police accident reports. Finally, CADRE are not intended to include all data needed to analyze safety issues for heavy trucks. These date elements have been addressed by the National Governors' Association "Supplemental Truck and Bus Accident Report."

The CADRE have been grouped in three general categories: Accident, Vehicle, and Person. Accident data are needed to provide general characteristics about the circumstances of the accident and to properly classify the accident into categories necessary for highway safety analysis. Data to identify and classify each vehicle involved in the crash is essential. This information permits analysis of differences in numbers of crashes and frequency of injuries associated with different types of vehicles and countermeasures. Data about each person in the crash permit association of crash outcomes with vehicle characteristics and evaluation of occupant protection issues. The data file must be structured so that each person in the crash, including uninjured occupants, can be identified as an occupant of one of the involved vehilces or as a nonoccupant.

The proposed CADRE are:

Accident Level

First Harmful Event
Speed Limit

Vehicle Level

Vehicle Identification Number
Location and Extent of Vehicle Damage

Person Level (occupant and nonoccupant)

Age
Seating Position
Occupant Protection System Type and Use
Ejection/Entrapment/Extrication
Body Region Injured
Treatment/Disposition of Injured Persons
BAC Test Results

A detailed description of each proposed element is contained in "Section 2—Detailed Description of the CADRE." Included are a general overview of the proposed element, its definition, and a proposed coding scheme. Where appropriate, the ANSI D20.1–1979 definition has been followed. In some instances, alternative coding schemes have been proposed to provide flexibility in the data collection process and recognize that different States have ongoing programs which provide these data.

Benefits

NHTSA believes that the CADRE for Highway Safety Analysis, if collected and automated, would lead to improved accident data analysis at all governmental levels:

State and Local Benefits: The States would have an improved data source which could be used to support their highway safety programs. Resources could be more accurately applied to the most important programs. Many of these elements are essential for examining the benefit of safety belt use laws, alcohol laws, and various law enforcement issues. Other elements will help support file linkages to look at public safety issues and the question of how much traffic crashes are costing the State and, ultimately, who pays. States also could compare themselves with their neighbors to determine the relative extent of their highway safety problem, and to help set program priorities.

Federal Benefits: The DOT conducts a considerable number of analyses using State accident data. Data are used to support basic research, identify the need for demonstration projects, and evaluate countermeasures. Including the CADRE in State computerized files would have a direct impact on the validity of analyses done with these data. In addition, it would materially help with the identification of vehicle design characteristics which are related to increased crash and injury propensity, or the evaluation of countermeasures which are intended to reduce vehicle crash and injury occurrence.

Public Benefits: The motoring public would benefit directly from improved vehicle and highway safety. By identifying problems and maximizing use of scarce resources, a reduction in injuries and fatalities could be achieved and vast amounts of dollars could be saved through the lowing of property damage accidents and costs associated with treatment for crash induced injuries.

Section 2—Detailed Description of the CADRE

Accident Information

• *First Harmful Event:* (Modified ANSI D20.1—detail on fixed object crashes truncated)

Classification of accident type would be used to identify a traffic safety problem and evaluate countermeasures, e.g., the magnitude of rollover accidents for utility vehicles.

Definition: The injury or damage producing event which characterizes the accident type and identifies the nature of the first harmful event, such as an explosion in the vehicle.

Codes used by element:

Code	Element
00	Noncollision
01	Overturn
02	Fire/Explosion
03	Immersion
04	Gas Inhalation
05	Thrown or falling object
06	Spill-2-whell vehicle (single veh. accident)
10	Pedestrian
20	Motor vehicle in transport
21	Head on
22	Rear end
23	Angle
24	Sideswipe
30	Parked motor vehicle
35	Railway train
40	Pedalcyclist
45	Animal
50	Fixed Object
97	Other
99	Unknown

• *Speed Limit:* (ANSI D20.1—Miaximum Speed Limit)

Speed limit would be used to analyze effects of changing the maximum speed limit on a particular roadway.

Definition: The legal (other than statutory) limit for the primary road where the crash occurred, whether posted or not. In those instances where crashes occur at the intersection of two roadways, the higher speed limit should be coded.

Codes used by element:

Code	Element
Speed Limit 99	Speed Limit in MPH Unknown.

Vehicle Information

• *Vehicle Identification*

An accurate specification of each vehicle involved in the crash and its specific design characteristics.

**Vehicle Identification Number:* (ANSI D20.1)

Definition: A unique 17 digit combination of alphanumeric characters affixed to the vehicle in specific locations and formulated by the manufacturer.

• *Crash Damage Severity:*

An accurate assessment of the crash severity for each vehicle in the crash would be used to properly classify the outcome of the crash and to provide a uniform threshold for analyses. Specifically would include:

**Disposition:* (ANSI D20.1, modified—Vehicle Removal)

Definition: The method of disposition of the vehicle after accident.

Codes used by element:

Code	Element
1	Towed away (hauled from scene) due to vehicle damage.
2	Driven away (driven from scene).
3	Remained (remained at scene) due to vehicle damage.
9	Unknown.

**Principal Area of Damage/Extent of Damage:* (ANSI D20.1—Vehicle Damage Area/Deformity)

Definition: The location and extent of vehicle damage sustained in the accident.

Codes used by element:

Code	Element	Code	Element
00	None	07	Left side
01	Front center	08	Left front
02	Right front	09	Top and Windows
03	Right side	10	Undercarriage
04	Right rear	11	Total (Damage to all Areas)
05	Rear Center	12	Other
06	Left rear	99	Unknown
Extent of Deformity:			
0	None	4	Moderate
2	Minor	6	Severe
		9	Unknown

An alternative code structure for this element is the Traffic Accident Data Project (TAD) Scale. TAD is a code structure which uses alpha characters for areas damaged, followed by a numeric scale from 1–7, for degree of damage based upon pictorial standards.

Person Information

• *Seating Position:* (ANSI D20.1—Occupant and Nonoccupant Location Prior to Impact)

Without known seating position for each person in the vehicle, and nonoccupants, it is not possible to evaluate the effect of occupant protection systems or programs, and identify nonoccupant concerns.

Definition: The location in or outside a motor vehicle for each person prior to impact of an accident.

Codes used by element:

Code	Element
11	Driver seat (motorcycle operators as well as auto or truck drivers.)
12	Front passenger seat other than driver seat and the far right passenger seat
13	Front seat passenger near right window (inc. bucket seat beside driver
21	2nd row passenger seat directly behind driver (applies to motorcycles)
22	2nd row passenger seat behind front seat but not near left or right window
23	2nd row passenger seat behind front seat and near right window
31	3rd row passenger seat directly behind driver (applies to motorcycles)
32	3rd row passenger seat behind front seat but not near left or right window
33	3rd row passenger seat behind front seat and near right window
40	Sleeper berth of truck or tractor
70	Any position in vehicle not included above, whether or not a seat is present (applies to truck bed, open/enclosed)
71	Any position on or outside of vehicle other than above
99	Unknown.

Codes may be repeated for persons sitting in the same, especially middle, position or on the lap of another person.

• *Protection System Use:* (1990 FARS Codes)

Proper classification of the use of available occupant protection systems would be used to evaluate the effectiveness. The VIN of the vehicles involved would provide the type of restraint available in the vehicle. Two variables, then, would be used to properly collect this data:

**Restraint System Use*

Definition: The restraint equipment in use by each vehicle occupant at the time of the crash.

Codes used by Element:

Code	Element
0	None Used—Vehicle Occupant Not applicable—Nonmotorist
1	Shoulder belt only used
2	Lap belt only used
3	Shoulder and lap belt used
4	Child Safety seat used
5	Motorcycle helmet used
8	Restraint used—type unknown
9	Restraint use unknown

**Airbag Function*

Definition: The functioning of the airbag within a vehicle.

Codes used by Element:

Code	Element
0	Non-Motorist
3	Deployed
4	Nondeployed
9	Unknown or Not applicable

• *Age:* (ANSI D20.1—Driver Date of Birth, Passenger Age, and Pedestrian Age)

Accurate reporting of age would be used to assess effectiveness of protection systems for specific age groups and to identify the need for safety programs directed toward them.

Definition: The age of each involved person in an accident.

Codes used by Element:

Code	Element
00–97	Code age directly
98	Over 97 years of age
99	Unknown

• *Ejection/Entrapment:* (ANSI D20.1—Occupant Location After Impact)

Occupant protection systems differ in the extent to which ejections are prevented or mitigated. This variable would be used to evaluate this issue and to evaluate the effect entrapment has on the injury outcome of crashes.

Definition: The location of each person (either ejected or entrapped) as a result of an accident.

Codes used by Element:

Code	Element
0	Not ejected or trapped
1	Ejected (Degree not specified)
2	Total ejection
3	Partial ejection
4	Trapped
9	Unknown

• *Treatment/Disposition of Injured:*

The reporting of injury severity by police officers is largely subjective. Reporting of the disposition of the injured occupants could provide a more objective evaluation of the severity of injuries received in the crash.

Definition: Injury disposition of each involved person in the accident.

Codes used by Element:

Code	Element
1	Fatally injured
2	Injured, Admitted to Hospital
3	Injured, Treated at Hospital
4	Injured, Treated at Scene
5	Injured, Seek own Treatment
6	Injured, Treatment Unknown
7	Not injured
9	Unknown if Injured

• *Body Region Injured:*

Body region would be used to assess the effectiveness of occupant protection systems and to improve interior vehicle design.

Definition: Location of most serious physical complaint for each injured person.

Codes used by Element:

Code	Element
01	Head
02	Face
03	Neck/Cervical Spine
04	Chest
05	Back—Thoracic or Lumbar Spine
06	Shoulder—upper arm
07	Elbow—lower arm—hand
08	Abdomen
09	Pelvis
10	Hip—upper leg
11	Knee—lower leg—foot
12	Soft Tissue
13	Entire body
99	Region Unknown

Person Level Information: Specific Only to the Driver

• *Blood Alcohol Concentration Test Results:* (ANSI D20.1)

Alcohol related traffic crashes are a serious safety problem. Many State programs are in place to decrease the incidence of drunk driving. Blood Alcohol Concentraton (BAC) would be used to provide an accurate measure of alcohol related crashes in order to evaluate effectiveness of these programs and to identify high problem areas. Inclusion of the BAC data element on the accident report form is encouraged. However, for CADRE all that is required is that BAC data be automated in a way that it can be merged with computerized police accident report files.

Definition: The percent of BAC or its equivalent (grams per deciliter gm/dL).

Codes used by Element:

Codes	Element
XYZ	BAC of 0.15 gm/dL is coded 015

Section 3—Other Elements Needed for Highway Safety Analysis

Accident Level

Accident Date and Time
Accident Day of Week
Accident severity
Contributing Circumstances
Emergency Notification
Emergency Response Arrival Time
Subsequent Harmful Event(s)
Weather Conditions
Light Conditions

Vehicle Level

Cause for Drive/Vehicle Maneuver
Vehicle Make, Model, Model Year and Body Type
Vehicle Maneuver
Vehicle Usage (add School Bus to D–20)
Violation(s) Charged

Person Level

Injury Classification
Nonoccupant Action
Nonoccupant Location Prior to Impact
Sex
Visibility Obstruction

Roadway Level

Functional Classification of Highways
Horizontal Alignment
Location of First Harmful Event
Roadways
Road Surface Condition
Traffic Control Device Condition
Traffic Control Device Type

Section 4—Comments from the Public

Implementing these data element recommendations will require a commitment by all interested parties. Local, State, and Federal entities must work together to improve the quality of these data bases to ensure the availability of analytic data for highway safety purposes. If we are to manage our highway safety program effectively, at all levels of government, we need complete and accurate data. Adoption of CADRE would help meet that goal.

In order to achieve this goal, NHTSA requests comments on the proposed CADRE. Specifically, we request your comments with respect to:

- The usefulness of these elements for performing highway safety analysis;
- Whether they are currently collected in some form, (PAR, Hospital Records, etc.), and reside on your State's computerized traffic records system;
- What barriers exist which may hinder collection of these data elements;
- The possibilities for linking these data with hospital and emergency medical services injury data; and
- Whether other data elements should be added to the CADRE or substituted for elements in the proposed CADRE.

NHTSA expects to publish the CADRE in its final form by the end of 1990. In order to benefit from comments which interested parties and the public may wish to forward, we invite the submission of comments on this proposal. All comments submitted in response to this notice will be considered by the agency. Following the close of the comment period, NHTSA will publish a notice announcing the completion and availability of the final version of the CADRE.

Written comments should be submitted to: NHTSA Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Comments should refer to Docket #90–07, Notice 01.

It is requested, but not required, of interested persons that ten copies of each comment be submitted. All comments must not exceed fifteen pages in length. (49 CFR 553.21). Necessary attachments may be appended to these suggestions without regard to the fifteen page limit. This limitation is intended to encourage individuals to present their views in a concise fashion.

All comments received before the close of business on the comment closing data listed above will be considered and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will be considered. The agency will continue to file relevant information as it becomes available. It is recommended that interested persons continue to examine the docket for new material. Those persons desiring to be notified upon receipt of their comments by the docket should include a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

George L. Parker,

Associate Administrator, Research and Development.

[FR Doc. 90–9988 Filed 4–26–90; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 25, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0035.
Form Number: 943, 943PR, 943A, and 943A–PR.
Type of Review: Extension.
Title: Employer's Annual Tax Return for Agricultural Employees.
Description: Agricultural employers must prepare and file Form 943 and Form 943PR (Puerto Rico only) to report and pay FICA taxes and (943 only) income tax voluntarily withheld. Agricultural employers may attach Form 943A and 943A–PR to Forms 943 and 943PR to show their tax liabilities for eighth-monthly periods. The information is used to verify that the correct tax has been paid.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents: 396,270.
Estimated Burden Hours Per Response/Recordkeeping:

	943/943PR	943A/943A–PR
Recordkeeping	8 hrs, 51 mins.	27 hrs, 30 mins.
Learning about the law or the form.	22 mins.	
Preparing the form.	1 hr, 28 mins.	27 mins.
Copying, assembling, and sending the form to IRS.	16 mins.	

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 4,505,031 hours.
OMB Number: 1545–0225.
Form Number: 6248–T.
Type of Review: Extension.
Title: Summary and Transmittal of Windfall Profit Tax Information.
Description: Form 6248–T is filed by purchasers of crude oil to report the type of Form 6248 being filed. It also informs the IRS if the Form 6248 being filed contains an identifying number. The IRS uses Form 6248–T to determine if the identify of the producer is correct and, if no identifying number is indicated, to search the files for one.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Response/Recordkeeping: 1 hour, 52 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 744 hours.
OMB Number: 1545–0915.
Form Number: 8332.
Type of Review: Extension.

Title: Release of Claim to Exemption for Child of Divorced or Separated Parents.
Description: This form is used by the custodial parent to release claim to the dependency exemption for a child of divorced or separated parents. The data is used to verify that the noncustodial parent is entitled to claim the exemption.
Respondents: Individuals or households.
Estimated Number of Respondents: 150,000.
Estimated Burden Hours Per Response/Recordkeeping—7 minutes. Learning about the law or the form—5 minutes. Preparing the form—7 minutes. Copying, assembling, and sending the form to IRS—14 minutes.
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 81,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Wshington, DC 20224.
OMB Reviewer: Milo Sunderhalf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 90–10050 Filed 4–30–90; 8:45 am]
BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Moscow: Treasures and Traditions" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Washington State Convention and Trade Center, Seattle, Washington, beginning on or about June 1, 1990, to on or about September 30, 1990; and at the International Gallery, Washington, DC, beginning on or about November 16, 1990, to on or about February 3, 1991, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 19, 1990.

Alberto J. Mora,
General Counsel.
[FR Doc. 90–10041 Filed 4–30–90; 8:45 am]
BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/485–7978, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 55, No. 84
Tuesday, May 1, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 26, 1990.

TIME AND DATE: 10:00 a.m., Wednesday, May 2, 1990.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open and Closed [Pursuant to 5 U.S.C. § 552b(c)(10)]

MATTERS TO BE CONSIDERED: In Open session the Commission will consider and act upon the following:

1. *Local 1769, District 22, UMWA v. Utah Power & Light Co., Mining Division,* Docket No. WEST 87-86-C. (Issues include whether the judge erred in dismissing the compensation complaint.)

In Closed session the Commission will consider and act upon the following:

2. *Midwest Minerals, Inc.,* Docket No. WEST 89-67-M. (Issues include further consideration of a motion to remand.)

It was determined by a unanimous vote of Commissioners that the second item be held in closed session, and that no earlier announcement of the meeting was possible. Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 90-10215 Filed 4-27-90; 3:06 pm]
BILLING CODE 6735-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., May 21, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping and agency liaison.
2. Benefits administration.
3. Investments.
4. Participants communications.
5. Approval of the minutes of last meeting.
6. Thrift Savings Plan activities report by the Executive Director.
7. Approval of the update of the FY 1990-FY 1991 budget document.
8. Investment policy review.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: April 25, 1990.
Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-10154 Filed 4-27-90; 9:55 am]
BILLING CODE 6760-01-M

DEPARTMENT OF JUSTICE PAROLE COMMISSION

Record of Vote of Meeting Closure

(Public Law 94-409)
(5 U.S.C. Sec 552b)

I, Cameron M. Batjer, Vice Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock am. on Tuesday, April 24, 1990 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 12:00 p.m. The purpose of the meeting was to decide approximately 12 appeals from National Commissioners' decisions pursuant to 28 C.F.R. Sec. 2.27. Six Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel Lopez, and Victor M.F. Reyes.

IN WITNESS WHEREOF, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: April 26, 1990.
Cameron M. Batjer,
Vice Chairman, U.S. Parole Commission.

[FR Doc. 90-10194 Filed 4-27-90; 1:53 pm]
BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 30, May 7, 14, and 21, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 30

Thursday, May 3

10:00 a.m.
Briefing on Evolutionary Light Water Reactor Certification Issues and Related Regulatory Requirements (Continuation from 4/27) (Public Meeting)
2:00 p.m.
Briefing on EEO Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 7—Tentative

Thursday, May 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 14—Tentative

Monday, May 14

10:00 a.m.
Briefing on Status of Nine Mile Point 1 Restart (Public Meeting) (Tentative)

Tuesday, May 15

2:30 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

Wednesday, May 16

2:00 p.m.
Briefing on Proposed Rule on License Renewal (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 21—Tentative

There are no Commission meetings scheduled for the Week of May 21.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meetings Call (Recording)—(301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: April 27, 1990.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 90–10214 Filed 4–27–90; 2:29 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 55, No. 84
Tuesday, May 1, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP90-1170-000, et al.]

Tennessee Gas Pipeline Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 90-9636 beginning on page 17660 in the issue of Thursday April 26, 1990, make the following correction:

On page 17663, in the second column, under **10. Mid Louisiana Gas Company** the docket number should read "CP90-1195-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 590

Administrative Procedures With Respect to the Import and Export of Natural Gas, Technical Amendments

Correction

In rule document 89-30270 beginning on page 53530 in the issue of Friday, December 29, 1989, make the following corrections:

§ 590.202 [Corrected]

On page 53533, in § 590.202, in paragraphs (a) and (b)(5), in the ninth line of both, "consistent" should read "inconsistent".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 179

[Docket No. 89N-0397]

Irradiation in the Production, Processing, and Handling of Food; Labeling

Correction

In rule document 90-9030 beginning on page 14413 in the issue of Wednesday, April 18, 1990, make the following correction:

On page 14415, in the first column, in amendatory instruction 2., in the first line, "Section 179.16" should read "Section 179.26".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-90-4214-11; IDI-05281]

Proposed Continuation of Withdrawal; Idaho

Correction

In notice document 90-3556 beginning on page 5516 in the issue of Thursday, February 15, 1990, make the following correction:

On page 5517, in the first column, the fourth line under "Baumgartner Recreation Area" should read "SW¼SE¼, and SW¼SE¼SE¼;".

Note: The correction published at 55 FR 10666, March 23, 1990 should be disregarded.

BILLING CODE 1505-01-D

federal register

Tuesday
May 1, 1990

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1

Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 90364-0071]

RIN 0651-AA37

Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending its regulations to establish a standardized format for descriptions of nucleotide and amino acid sequence data submitted as a part of patent applications, in conjunction with the required submission of this data in computer readable form. The standardized format is needed to permit proper examination and processing of such applications and to improve quality and efficiency of the examination process, promote conformity with usage of the scientific community, and improve dissemination of sequence data in electronic form. The standard symbols and format for sequence data, and the submission of this data in computer readable form, will be required for most disclosures of nucleotide and amino acid sequence data in patent applications filed after the effective date of the rule change.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Lois E. Boland, Special Program Examiner, Office of the Assistant Commissioner for Patents, Crystal Park 2–Suite 919, by telephone at (703) 557–8384 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Currently, problems exist in the presentation, examination and printing of nucleotide and amino acid sequence data because of the lack of uniformity in submission of sequence data to the PTO and the impracticality of properly searching and examining sequences submitted in paper form. For example, it is impractical for an examiner, searching a particularly lengthy sequence in a non-conforming format, to accurately key the query necessary to search the sequence in a computerized search. Further, the lack of standardized symbol use and standardized format results in a very difficult comparison, on the part of the examiner and the public, of what is claimed in a given patent application and what is disclosed in the prior art. Still further, the number of patent applications containing nucleotide and amino acid sequences is increasing every year. The major examination problems can be attributed to the volume of data and the use of inconsistent paper formats. The lack of consistency in symbols used and formatting requires examiners to attempt to convert the sequence data, as it appears in patent applications, into formats that are consistent with those appearing in the prior art in order to make proper evaluations of the patentability of the inventions claimed in the patent applications. Problems are also encountered in the printing of nucleotide and amino acid sequence data in patents because the data must be rekeyed under current patent printing procedures. This could easily result in the printing of erroneous sequences. In summary, the diversity and complexity of nucleotide and amino acid sequence data result in searching and analysis difficulties both within the PTO and outside the PTO, decreased accuracy of search and reproduction, and increased cost.

The PTO is amending its regulations to establish a standardized format for descriptions of nucleotide and amino acid sequence data submitted as a part of patent applications, in conjunction with the required submission of the data in computer readable form, which would result in the following advantages:

1. Cost savings in input of sequence data;
2. A practical and more accurate sequence search capability;
3. Improved interference detection;
4. More efficient examination;
5. Improved accuracy of printed sequences;
6. Creation of a PTO database of most patent-disclosed sequence data;
7. Improved public data access and dissemination in electronic form;
8. Exchange of published sequence data, in electronic form, with the Japanese Patent Office (JPO) and the European Patent Office (EPO) in a Trilateral Sequence Exchange Project;
9. Conformity with the scientific community; and
10. The encouragement of other government agencies and private vendors to include sequences appearing in patents in their data bases.

In those areas of biotechnology in which nucleotide and/or amino acid sequence information is significant, many patent applicants are accustomed to, or familiar with, the submission of such sequence information to various sequence databases, such as GenBank, which is produced by the National Institutes of Health. Information regarding GenBank can be obtained from GenBank/Intelligenetics, Inc., 700 East El Camino Real, Mountain View, California 94040, (415) 962–7364. In order to facilitate such submissions, or merely for the purpose of researching and developing sequence information, many eventual patent applicants also generate or encode sequence information in computer readable form. In view of this, compliance with the rules herein should not pose a significant additional burden for these applicants. In order to further facilitate compliance with the rules that follow, the PTO will make available to the public input programs that are based on the Authorin program produced by GenBank. These input programs are specifically tailored to the requirements herein. The PTO presently intends to offer training for applicants and/or their attorneys to aid in their compliance with these rules. Details regarding availability of the modified Authorin program and scheduling of training programs will be announced in the PTO's *Official Gazette*.

The standard symbols and format, as well as the submission of sequence data in computer readable form, will be required for all disclosures of nucleotide and amino acid sequence data in new patent applications filed after the effective date of the rule change. Compliance with the rules, on a voluntary basis, is encouraged for applications filed prior to the effective date of these final rules. It is envisioned that, for the great majority of applications affected by these rules, applicants will not be subjected to significant additional burdens, with regard to both time and/or costs, in order to comply with these rules. However, if exceptional circumstances do arise and certain applicants experience specific hardships in attempting to comply with these rules, the PTO will consider appropriate petitions, filed in accordance with 37 CFR 1.183, to waive the rules, for which any fees may be refunded or waived dependent upon the particular circumstances. The final rules will not apply to reissue applications or reexamination proceedings filed after the effective date unless the application which matured into the patent sought to be reissued or reexamined was subject to these rules. Further, the final rules will not apply, except on a voluntary basis, to continuation or divisional applications filed after the effective date unless any application upon which 35 U.S.C. 120 priority is claimed was also subject to these rules. The final rules will apply to continuation-in-part applications filed after the effective date where any application upon which 35 U.S.C. 120 priority is claimed was

subject to these rules or where the material that is newly added in the continuation-in-part includes sequence information that falls within the requirements of these rules. For those continuation-in-part applications that are filed after the effective date where the application upon which 35 U.S.C. 120 priority is claimed was not subject to these rules, compliance with these rules, on a voluntary basis, is encouraged.

The final rules define a set of symbols and procedures that will be both mandatory and the only way that an applicant will be permitted to submit certain information about a sequence that falls within the definitions used in these rules. Thus, § 1.821 defines a sequence for the purpose of these final rules; sets forth the requirements for specific symbols, formats, paper and computer readable copies of the sequence; and specifies the deadlines for complying with the requirements. Sections 1.822 to 1.824 set forth detailed descriptions of the requirements that will be mandatory for the presentation of sequence data, and § 1.825 sets forth procedures that will be available to an applicant in the event that amendments to the sequence information or replacement of the computer readable copy become necessary. There is nothing in these final rules that is intended to alter in any manner the prohibition against the introduction of new matter (35 U.S.C. 132 and 251), or the prohibition against the introduction of information that is not described in the application as originally filed (35 U.S.C. 112, first paragraph).

With regard to the symbols and format to be used for nucleotide and/or amino acid sequence data set forth in § 1.822 and the form and format for sequence submissions in computer readable form set forth in § 1.824, the PTO intends to accommodate progress in the areas of both standardization and computerization as they relate to sequence data by subsequently amending the rules to take into account any such progress. This progress will probably be reflected in the refinement of or liberalization of these final rules. For example, progress in the area of the standardization of sequence data will likely result in a more comprehensive rule; and the branched sequences and the D-amino acids that are currently excluded from the rules may, in the future, be brought within the scope of the rules once the necessary standardization technology becomes available. As a further example, the computer readable form is currently limited to diskettes and tapes, but it readily can be seen that progress in the technology for developing databases of the type the PTO has envisioned will likely permit a broadening of the permissible types of computer readable forms that may be submitted. The same can be said for the computer/operating-system configurations that are currently permitted. As the PTO becomes able to provide greater refinement and liberality in these areas, the PTO will do so by appropriate amendments to the rules herein.

These final rules are part of an ongoing coordinated effort in the private sector and among the EPO, the JPO and the PTO to standardize the use of symbols and the format for sequence information, in order to permit the exchange and use of each other's published data. The PTO has signed a Memorandum of Understanding with the EPO and the JPO that calls for the capture and exchange of sequence data contained in patent applications filed with the three Offices from 1990 onward. A final agreement relating to the details of this undertaking was reached in October 1989. A briefing setting forth the PTO's intentions for handling patent applications containing sequence data was held for the benefit of interested bar and industry groups on July 14, 1988. Draft rules were circulated to interested bar and industry groups on September 23, 1988. Numerous organizations and individuals filed comments in response to both the briefing and the draft rules. Finally, a notice of proposed rulemaking relating to the Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures was published in the **Federal Register**, 54 FR 18671 (May 2, 1989), and in the *Official Gazette*, 1102 O.G. 34 (May 16, 1989).

In this notice of final rulemaking, a description of the changes in the text of the proposed rules is provided along with an explanation of the reasons supporting the changes. In addition, comments received in response to the notice of proposed rulemaking are analyzed. Finally, an explanation of the content of the final rules is provided.

Changes in Text of Proposed Rules

Several changes have been made in the text of the final rules from the text of the proposed rules which were published for comment in the notice of proposed rulemaking. Those changes are discussed below.

Section 1.821

In the preamble for paragraph (a) of this section as proposed, the phrase "a sequence" as proposed has been replaced with the phrase "an unbranched sequence", and the sentence "Branched sequences are specifically excluded from this definition." has been inserted between the first and second sentences of the preamble as proposed for the purpose of clearly excluding branched sequences from the scope of the final rule. Due to the lack of a generally accepted standardized method for the representation and search of branched sequences in computer databases, it was decided that, until the requisite standards are developed, branched sequences would be excluded from the scope of the final rule. As such, these regulations are not applicable to branched sequences. In the first sentence of the preamble, "is interpreted to mean" has been changed to "means." This latter change is considered to be editorial in nature and is not intended to change the meaning of the preamble in any way.

In paragraphs (a)(1) and (a)(2) of this section, the phrase "in the description and/or the separate part of the disclosure on paper copy corresponding to, but not including," as proposed has been replaced with the phrase "as set forth in § 1.822(b), but shall not be shown explicitly in". These changes and the changes, discussed below, that were made to § 1.822(b) and the addition of § 1.822(p) were made for the purpose of clarifying the treatment to be accorded modified nucleotide bases and modified and unusual amino acids.

In paragraph (a)(2) of this section, the sentence "Only peptides or proteins containing normal peptide bonds are embraced by this definition." as proposed has been replaced by the sentence "Any peptide or protein that can be expressed as a sequence using the symbols in § 1.822(b)(2) in conjunction with a description elsewhere in the 'Sequence Listing' to describe, for example, modified linkages, cross links, end caps, non-peptidyl bonds, etc., is embraced by this definition." This change was made to clarify the scope of the rules relative to amino acids. Accordingly, an amino acid sequence will not be excluded from the scope of the rules merely due to the presence of one or several modified linkages, non-peptidyl bonds, etc. If an amino acid sequence, containing L-amino acids, can be represented by a string of amino acid abbreviations, with reference, where necessary, to a features table to explain modifications in the sequence, the sequence is embraced by the rules. The use of the terms "peptide or protein" implies, however, that the amino acids in a given sequence are linked by at least three consecutive peptide bonds.

In paragraph (b) of this section, the terms "above definition" have been

changed to "definition in paragraph (a) of this section" to clearly identify the definition to which reference is being made.

In paragraph (e) of this section, third and fourth sentences have been added to explicitly set forth the procedure to be followed when a computer readable form of a new application is identical with a computer readable form of another application. In that situation, an applicant may make reference to the other application and computer readable form in lieu of filing a duplicate computer readable form in the new application.

In paragraphs (g) and (h) of this section, the phrases "the requirements of one or more of" have been changed to "any of the requirements of." A corresponding change has been made in the body of paragraphs (g) and (h) by deleting "one or more of" and "above." These changes are considered to be editorial in nature. No change in substance is intended.

In paragraph (g) of this section, the phrase "two months from the date of filing or" has been deleted from the paragraph as proposed to clearly indicate that notices will be sent by the PTO to applicants for all failures to comply with the rules. Further, the phrase "whichever is later, in which to comply, or the application will be considered to be abandoned" has been changed to "in order to prevent abandonment of the application." This latter change is considered to be editorial in nature. No change in substance is intended.

In paragraph (h) of this section, the phrase "or no international search report will be established by the United States Patent and Trademark Office as an International Searching Authority for those claims in the application that are directed to nucleotide and/or amino acid sequences" has been deleted from the paragraph as proposed. International applications that fail to comply with any of paragraphs (b) through (f) of this section will be searched to the extent possible without the benefit of the information in computer readable form. In the first sentence of this paragraph, "further" has been changed to "other" in view of the severely limited time constraints for processing PCT patent applications. In the second to the last sentence of this paragraph, the phrase "include new matter or" has been inserted before the phrase "go beyond the disclosure in the application as filed." This phrase was inserted to acknowledge the parallel, for later reference, between the U.S. and PCT standards for new matter. The last sentence of this paragraph, as proposed, has been deleted to more closely parallel paragraph (g) of this section.

Paragraph (i) has been added to this section to address the concerns of the private sector with respect to the weight that may ultimately be accorded an omission of an item of information which is not required under the rule, regardless of whether that item has been designated as "recommended" or "optional." This paragraph makes clear that neither the presence nor absence of information which is not required under the rules will create a presumption that such information is necessary to satisfy any of the requirements of 35 U.S.C. 112. Further, this paragraph states that the grant of a patent on an application that is subject to §§ 1.821 through 1.825 constitutes a conclusive presumption that the granted patent complies with the requirements of these rules.

Paragraph (j) has been added to this section to facilitate administrative processing of all application papers, computer readable forms and fees filed under this section. Accordingly, all such application papers, computer readable forms and fees should be marked "Box SEQUENCE."

Section 1.822

In paragraph (a) of this section as proposed, "following requirements" has been changed to "requirements of paragraphs (b) through (p) of this section." This change was made to clearly delineate the requirements being referenced.

In the preamble for paragraph (b) of this section, various changes have been made to the rule as proposed to clarify the codes that may be used for the nucleotide and/or amino acid sequence characters in the representations of the nucleotide and amino acid sequences and to clarify the treatment to be accorded modified nucleotide bases and modified and unusual amino acids. The phrase "and (b)(2)" has been substituted for "through (b)(4)" because the lists of modified bases and modified and unusual amino acids that were set forth in paragraphs (b)(3) and (b)(4) of this section as proposed are now separately set forth in newly drafted paragraph (p) of this section as adopted. In conjunction with the separate listing of the modified bases and modified and unusual amino acids in paragraph (p) of this section, the substance of the second sentence of this paragraph as proposed has been deleted and has been set forth in paragraph (p) of this section as adopted. Three new sentences have been added to paragraph (b) of this section as proposed. The first new sentence sets forth the principle that only those codes listed in paragraphs (b)(1) and (b)(2) shall be used in the representation of the nucleotide and amino acid sequences. The second and third new sentences describe the manner in which modified bases and amino acids may be presented in nucleotide and amino acid sequences by virtue of the use of the codes set forth in paragraphs (b)(1) and (b)(2) of this section. The changes to paragraph (b) of this section as proposed serve to clearly delineate those codes that may be used in the representation of nucleotide and amino acid sequences from those that may be used elsewhere in the description or the "Sequence Listing." Accordingly, only those codes that are to be used in the representation of sequences are now set forth in paragraph (b) of this section as adopted whereas the controlled vocabulary for modified bases and modified and unusual amino acids is now separately set forth in paragraph (p) of this section as adopted. The second sentence of this paragraph, as proposed, has been deleted from this paragraph and now appears in § 1.823(a), as adopted.

In paragraph (d) of this section, the term "above" has been replaced by the term "below". The fact that the representation of double stranded nucleotide sequences will not be permitted in the "Sequence Listings" has obviated the need to accommodate those situations in which the coding regions of the coding strand of a double stranded nucleotide sequence and the amino acids corresponding to the codons in the coding strand of that nucleotide are depicted. In those situations, it was considered that the correspondence between the amino acids and the codons in the coding strand could most clearly be illustrated by positioning the amino acids above the nucleotide rather than below the nucleotide, as is more conventionally done. This arrangement was then, for the purpose of consistency, extended to the representation of all amino acids that corresponded to codons in the coding regions of a nucleotide. As stated above, because double stranded nucleotides will not be permitted in the "Sequence Listings," there is no longer a need to depict amino acids above corresponding codons. As such, paragraph (d) as adopted requires the depiction of amino acids corresponding to codons in the coding parts of a nucleotide sequence immediately below, not above, the corresponding codons.

Further, in paragraph (d) of this section, the new sentence "Where a codon spans an intron, the amino acid symbol shall be typed below the portion of the codon containing two

nucleotides." has been added to the end of the paragraph, as proposed. This sentence was added to clarify the representation of an amino acid that corresponds to a codon that spans an intron. It is considered to be self-explanatory.

In paragraph (e) of this section, the term "code" has been replaced by the term "abbreviation" for consistency with paragraph (b)(2) of this section.

In paragraph (f) of this section, the sentence "Leftover bases, fewer than 10 in number, at the end of noncoding parts of a sequence shall be grouped together and separated from adjacent groups of 10 or 3 bases by a space." has been added to the end of the paragraph as proposed. This sentence was added to clarify the representation of bases in a nucleotide sequence in those situations where an accumulation of bases, fewer than 10 in number, occur at the end of the non-coding part of a sequence.

Paragraphs (j) and (k) of this section as proposed have been changed to reflect the fact that the representation of double stranded nucleotide sequences will not be permitted in the "Sequence Listing." In paragraph (j) of this section as proposed, "single stranded" has been deleted, and ", only by a single strand," has been inserted between "presented" and "in." The effect of these changes, in conjunction with the deletion of paragraph (k) as proposed, is to preclude the presentation of double stranded nucleotides in the "Sequence Listing."

Insofar as paragraph (k) of this section as proposed has been deleted, paragraphs (l) through (p) as proposed have been redesignated as paragraphs (k) through (o), respectively, as adopted.

In paragraph (n) of this section as proposed (paragraph (m) as adopted), the procedure for numbering amino acid sequences has been changed. In the first sentence of the paragraph as proposed, "shall" has been changed to "may" to indicate that the numbering procedure dependent upon the identification of the mature protein is optional, not mandatory. This change was made to alleviate the concern that there may be instances when an applicant may not have identified the mature protein. As such, an alternative numbering procedure has been set forth for use when the numbering is not based upon the identification of the mature protein. The sentence "Otherwise, the enumeration of amino acids shall start at the first amino acid at the amino terminal as number 1." has been added to the paragraph as proposed to set forth this alternative numbering procedure. The second sentence of this paragraph as proposed has been moved to the end of the paragraph as adopted so as to be applicable to both of the numbering procedures that are set forth in the paragraph as adopted. The third sentence of this paragraph as proposed has been clarified to indicate that the pre-sequences, pro-sequences (newly added), pre-pro-sequences (newly added) and signal sequences referred to are, in fact, amino acids preceding the mature protein.

In paragraph (p) as proposed (paragraph (o) as adopted), the phrase "A partial sequence shall be numbered as a separate sequence and" has been deleted, "numbered" has been changed to "presented"; "separate sequence identifiers, with" has been added between "with" and "the"; and the sentence "A sequence that is made up of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence." has been added to the end of the paragraph as proposed. These changes have been made to address the concerns that the requirements for the presentation and numbering of partial, gapped and hybrid sequences were ambiguous.

Paragraph (p) as adopted is new relative to the text of this section as proposed. The substance of this new paragraph corresponds to that set forth in the second sentence of paragraph (b) as proposed. As such, the comments made above with regard to paragraph (b) of this section are applicable herein.

Section 1.823

In paragraph (a) of this section as adopted, two new sentences have been added to the paragraph as proposed. The first new sentence sets forth requirements relating to page and line length.

The second new sentence was transferred from § 1.822(b) in its entirety. This transfer was made to provide a more logical presentation of all of the requirements for the "Sequence Listing."

In paragraph (b) of this section, the second sentence as proposed has been replaced by three new sentences to more clearly set forth the required arrangement of information in the "Sequence Listing."

In paragraph (b)(1)(i) of this section as proposed, ":specify one name per line: SURNAME comma OTHER NAMES and/or INITIALS" has been added after "applicants" to clarify the format for the presentation of the applicants name in the "Sequence Listing." Similar changes have been made to name designations in paragraphs (b)(1)(vii)(A) and (b)(1)(ix)(A) as proposed.

In paragraph (b)(1)(ii) of this section as proposed, "four lines maximum" has been added to the parenthetical information to indicate that the response provided should not exceed four lines. Similar additions have been made throughout paragraph (b) of this section where the response provided may exceed the one line limitation now set forth in the preamble to paragraph (b) of this section.

In paragraph (b)(1) of this section as proposed, a new item of information has been added. This item of information relates to the number of sequences presented in the "Sequence Listing." The item is as follows: "(iii) NUMBER OF SEQUENCES (number of sequences in the "Sequence Listing"—M)." This item has been inserted after paragraph (b)(1)(ii), and paragraphs (b)(1)(iii) through (b)(1)(ix) as proposed have been redesignated as paragraphs (b)(1)(iv) through (b)(1)(x), respectively.

In paragraph (b)(1)(iii) as proposed (paragraph (b)(1)(iv) as adopted), a new information item has been added. This item relates to the addressee to which correspondence will be sent. The item is as follows: (A) ADDRESSEE (name of applicant, firm, company or institution, as may be appropriate). This item has been inserted before subheading (b)(1)(iii) (A) as proposed, and subheadings (b)(1)(iii) (A) through (E) as proposed have been redesignated accordingly.

In paragraph (b)(1)(v) as proposed (paragraph (b)(1)(vi) as adopted), ", if available" has been added after "M" to indicate that the submission of current application data is mandatory only if it is available to the applicant.

In paragraphs (b)(1)(v) and (b)(1)(vi) as proposed and paragraph (b)(2)(x) as adopted, the parenthetical information provided for application and document numbers, and, filing and publication dates has been expanded to encompass Patent Cooperation Treaty applications and publications.

In paragraphs (b)(1)(v)(B), (b)(1)(vi)(C) and (b)(1)(vi)(D) as proposed, ": specify as dd-MMM-yyyy" has been added after "available" to clarify the format for the presentation of date information in the "Sequence Listing." The lower case letters are employed to designate numeric responses, and the upper case letters are employed to designate alphabetical responses. As such, March 2, 1988, would be presented as 02–MAR–1988. In paragraph (b)(1)(ix)(G) as proposed (paragraph (b)(2)(x)(G) as adopted), "including month/date/year or season" has been changed to "specify as dd-MMM-yyyy, MMM-yyyy or Season-yyyy" to encompass all

variations in date designations that may be encountered.

In paragraph (b)(1)(v)(C) as proposed (paragraph (b)(1)(vi)(C) as adopted) ", specify each designation, left justified, within an eighteen position alpha numeric field" has been inserted after "assigned", and ", to maximum of ten classification designations" has been inserted after "rep" to clarify the field length and maximum number of repetitions for the classification designations.

In paragraph (b)(1)(vi) as proposed (paragraph (b)(1)(vii) as adopted), the references to "DOCUMENT NUMBER", "document number", "document type", "PUBLICATION DATE" and "publication date" throughout this paragraph have been deleted and replaced with the appropriate references to "APPLICATION NUMBER", "application number", etc., so that the information collected in this paragraph relates only to prior applications and filing dates, not publications and publication dates. Publication information, including document numbers and publication dates, can be provided in paragraph (b)(2)(x) of this section as adopted. Further, subheading (b)(1)(vi)(B) as proposed has been deleted, and (b)(1)(vi)(A) as proposed has been clarified to include the pertinent country information. As such, subheading (b)(1)(vi)(C) has been redesignated as (b)(1)(vii)(B). Further, "specify as two letter country code and eight digit document number" has been inserted after "number,". Information regarding the manner in which PCT applications should be cited has also been added to this parenthetical. In view of the above deletion of references pertaining to publication dates, subheading (b)(1)(vi)(D) as proposed has been deleted. Further, since "PRIOR APPLICATION DATA" may repeat, the plural designations throughout the paragraph as proposed have been deleted.

Paragraph (b)(1)(ix) "PUBLICATION STATUS" as proposed has been moved to paragraph (b)(2) of this section as adopted and designated as paragraph (b)(2)(x) "PUBLICATION INFORMATION". This change permits publication information to be submitted specifically with respect to a given sequence. Further, in paragraph (b)(1)(ix) as proposed, "Have the data that are disclosed in SEQ ID NO:X been published?" has been changed to "Repeat section for each relevant publication", and patent information fields have been added in the paragraph as adopted. The patent information fields are necessary to accommodate non-literature publications. Further, the format for the residue information collected in paragraph (b)(1)(ix)(H) as proposed has been changed so that this information can be collected in one line in paragraph (b)(2)(x)(K) as adopted. This last change was necessary to reduce the number of levels of information being collected so that the computer software that has been developed to manipulate the collected information can properly distinguish all of the items of information by the use of standard ASCII characters. The use of italics to designate items of information in the rules as proposed did not conform to this ASCII character requirement.

With the exception of the addition of the new item of information for "NUMBER OF SEQUENCES," all of the changes, as discussed above, to paragraph (b)(1) of this section as proposed are considered to be nonsubstantive. These changes clarify the information that is to be submitted and facilitate the collection and manipulation of the information for database purposes.

In paragraphs (b)(2)(i)(C) and (D) of this section as proposed, "both or unknown to applicant" have been added as possible responses for the items of information relating to "STRANDEDNESS" and "TOPOLOGY" in the paragraphs as adopted. These changes address the concerns that the strandedness and topology of sequences may not always be known with certainty. Further, in each of paragraphs (b)(2)(i)(C) and (D) as proposed, additional parenthetical information has been provided to clarify that strandedness and topology relate to those characteristics of the source organism molecule.

In paragraph (b)(2)(ii) as proposed, "KIND" has been changed to "MOLECULE TYPE" in the paragraph as adopted. This change corresponds to the same change made by GenBank for collecting sequence information. Further, "with subheadings, if any" has been inserted in the parenthetical because one of the molecule types that are listed has been modified to provide a subheading not previously provided for. Specifically, the subheading "(A) DESCRIPTION" has been provided for "Other nucleic acid." The molecule types listed in this paragraph as adopted differ slightly from those listed in the proposed rule. The adopted molecule types more closely correspond to the requisite controlled vocabulary currently in use in GenBank's Authorin submission program. Further, where separate alternative paragraphs (b)(2)(ii) were provided in this section as proposed for nucleotides and peptides or proteins, these separate paragraphs have been combined in the paragraph as adopted. These alternatives were considered to be unnecessary in light of the sequence type information collected in paragraph (b)(2)(i)(B) as proposed and adopted. Paragraphs (b)(2)(ii) (A), (B) and (C) as proposed have been deleted from this section of the rule as adopted. The information in paragraph (b)(2)(ii)(A) is not considered to be useful to the database and will not be collected. Paragraphs (b)(2)(ii) (B) and (C) are separately provided for in this section as adopted in paragraphs (b)(2)(v) and (b)(2)(iii), respectively.

New paragraphs (b)(2)(iii), (b)(2)(iv) and (b)(2)(v) have been provided in this section as adopted. Paragraph (b)(2)(iii) "HYPOTHETICAL (yes/no-R)" has been provided as a separate paragraph in this section as adopted because all of the molecule types in paragraph (b)(2)(ii) could be hypothetical, not just those previously designated as hypothetical. Paragraph (b)(2)(iv) "ANTI-SENSE (yes/no-R)" has been added to accommodate an emerging trend in the technology. Paragraph (b)(2)(v) "FRAGMENT TYPE . . ." has been added as a separate paragraph in this section as adopted, whereas it was collected as an item of information under paragraph (b)(2)(ii) "KIND" in this paragraph as proposed, in order to clearly delineate "KIND" or "MOLECULE TYPE" information from other unrelated items of information such as "FRAGMENT TYPE."

Further, in paragraph (b)(2)(ii)(B) as proposed (paragraph (b)(2)(v) as adopted), the "FRAGMENT TYPE" responses have been changed to clearly indicate that fragments are indeed intended by each response. As such, "N-terminal" and "C-terminal" are, in the paragraph as adopted, "N-terminal fragment" and "C-terminal fragment."

Paragraphs (b)(2)(iii) (A) through (C) as proposed will not be collected separately. Rather, in the rule as adopted, paragraph (b)(2)(vi)(A) will collect this in "ORGANISM (scientific name of source organism)."

In paragraph (b)(2)(iii)(F) as proposed (paragraph (b)(2)(vi)(D) as adopted), the parenthetical has been expanded to incorporate the subheadings "*(1)* GERM LINE" and "*(2)* REARRANGED", and those subheadings have been deleted. This change was necessary to reduce the number of levels of information being collected so that the computer software that has been developed to manipulate the collected information can properly distinguish all of the items of information by the use of standard ASCII characters. The use of italics to

designate items of information in the rules as proposed did not conform to this ASCII character requirement.

In paragraph (b)(2)(vi) as adopted (paragraph (b)(2)(iii) as proposed), "CELL LINE" and "ORGANELLE" have been added as paragraphs (B)(2)(vi) (H) and (I), respectively. These items of information were collected in paragraphs (b)(2)(vi)(A) and (b)(2)(ii), respectively, as proposed. It is considered that these items of information are more properly collected under the "ORIGINAL SOURCE" heading.

In paragraph (b)(2)(iv) as proposed, paragraph (b)(2)(iv)(A) has been deleted in view of its addition to paragraph (b)(2)(vi) as adopted.

Paragraph (b)(2)(vi) as proposed has been deleted and the corresponding information will be collected in the "FEATURE" information in paragraph (b)(2)(ix)(D) "OTHER INFORMATION." It is considered that these items of information are more properly collected under the "FEATURE" heading.

In paragraph (b)(2)(vii) as proposed (paragraph (b)(2)(ix) as adopted), "FEATURES" has been changed to "FEATURE" to indicate that one feature at a time is, in fact, being described, although multiple features may be described by virtue of repeating the field. Further, a new subheading "(A) NAME/KEY (provide appropriate identifier for feature):" has been added to the paragraph as adopted, and the remaining subparagraphs have been redesignated. This new subheading is necessary so that information relating to feature identifiers is positively requested and can, as such, be searched as a separate field. In this paragraph, the parenthetical for the subheading "LOCATION" has been expanded to encompass the information collected in the now deleted subheading "COMPLEMENT." Further, it is now explicitly stated that the location should be specified in accordance with the syntax of the DDBJ/EMBL/GenBank Feature Table Definition. This is the syntax that has been jointly developed by the three major sequence databases in Japan, Europe and the United States. As set forth above, a new subheading "(D) OTHER INFORMATION" has been added to collect the information collected in the now deleted paragraph (b)(2)(vi).

Section 1.824

In paragraph (a) of this section as proposed, the phrase "required by § 1.821(e)" has been added after the terms "computer readable form" to provide a cross-reference to the section of the rules that requires the submission of the computer readable form.

In paragraph (b) of this section as proposed, the erroneous reference to "National" has been deleted in the paragraph as adopted.

In paragraph (d) of this section as proposed, the two sentences have been combined into a single sentence in the paragraph as adopted. This change is considered to be editorial in nature. No change in substance is intended.

In paragraph (f) of this section as proposed, the preamble has been changed to reiterate the fact that any means may be used to create the computer readable form as long as the conditions set forth in this paragraph are satisfied. Further, in order to clarify the tape requirements in this paragraph, the magnetic tape specification has been deleted from paragraph (f)(1) and a new paragraph (f)(4) has been added solely directed to magnetic tapes.

In paragraph (f)(2) as proposed, the spelling of "Xenix" has been corrected, the references to "Unix" or "System V" have been deleted, and the erroneous "LPR" designation has been changed to "lpr" in the paragraph as adopted.

In paragraph (f)(3) as proposed, a new media format has been inserted in the paragraph as adopted to accommodate the high capacity diskettes now available for the Apple Macintosh system. This new format is a "3.50 inch, 1.4 Mb storage" diskette.

In paragraph (h) as proposed, the word "phase" in the last sentence has been changed to "stage" in the paragraph as adopted to properly track the terminology currently in use in other sections of 37 CFR.

Section 1.825

In paragraph (a) as proposed, a parenthetical cross-reference to the section and paragraph of these rules that establishes the requirement for the submission of the paper copy of the "Sequence Listing" has been provided in the paragraph as adopted.

In paragraph (b) as proposed, a parenthetical cross-reference to the section and paragraph of these rules that establishes the requirement for the submission of the computer readable form has been provided in the paragraph as adopted.

In paragraph (c) as proposed, the phrase "an application after the grant of a patent thereon" has been changed to "a patent, e.g., by reason of reissue or certificate of correction," to more properly state that patents, not applications, are the subject of the corrections referenced in the paragraph as adopted.

Response to and Analysis of Comments

Written comments from thirteen (13) sources were received in response to the notice of proposed rulemaking. Some suggestions made in the comments have been adopted as presented or in modified form, and others have not been adopted. A detailed analysis of the comments follows. There was no oral testimony presented at the public hearing conducted on July 12, 1989.

Comment: Two comments questioned the authority of the PTO to impose these regulations. The comments alleged that computer readable forms are not "in writing" as required by 35 U.S.C. 111, and that the rules represent a fundamental revision of 35 U.S.C. 111, 112, and 113, and cannot be reconciled with the requirements of law.

Response: 35 U.S.C. 6 gives the Commissioner the authority to establish regulations "not inconsistent with law." These rules require sequences to be submitted "in writing" as specified under 35 U.S.C. 111. The additional requirement of the submission of a computer readable form is not inconsistent with § 111. The rules do not alter, in any way, the requirements of 35 U.S.C. 112 and 35 U.S.C. 113.

Comment: One comment stated that the rules will have a significant impact on how the claims or disclosures will be interpreted. Further, it was stated that the rules preclude the applicant from being his/her own lexicographer.

Response: As stated above, the rules do not alter, in any way, the requirements of 35 U.S.C. 112. There will be no change in disclosure and/or claiming requirements after the implementation of the rules. The use of sequence identification numbers (SEQ ID NO:X) only provides a shorthand way for applicants to claim their inventions. These identification numbers do not in any way restrict the manner in which an invention can be claimed.

Comment: One comment questioned the validity of requiring applicants to ensure that there is no added matter upon amendment, which until now had been the responsibility of the PTO.

Response: This is not the first instance in which the applicant is required to ensure that there is no new matter upon amendment. The requirement is analogous to that found in 37 C.F.R. § 1.125 regarding substitute specifications. When a substitute specification is required because the number or nature of amendments would make it difficult to examine the case, the applicant must include a statement that the substitute specification includes no new matter. The necessity of requiring a

substitute "Sequence Listing" upon amendment is similar to the necessity of requiring a substitute specification and, likewise, the burden is on the applicant to ensure that no new matter is added. Applicants have a duty to comply with the statutory prohibition (35 U.S.C. 132 and 251) against the introduction of new matter.

Comment: Two comments recommended that the standardized format not be made mandatory, but optional, or a less rigid code should be adopted.

Response: The stated purpose and usefulness of these rules depends upon and requires that the resultant database be accurate, uniform and complete. The Office has determined that mandatory compliance with a single standardized format is the most efficient way of accomplishing this goal.

Comment: Four comments suggested that the proposed effective date of January 1, 1990, be postponed. The Authorin program should be available and in use. There should be a longer transition period where the standardized format serves as a guideline rather than a mandatory rule.

Response: As noted above, the effective date of the rules has been postponed. There will be a testing period after the publication but prior to the effective date of these final rules in which applicants may elect to participate on a voluntary basis.

Comment: Three comments were made to the effect that the PTO, the JPO, and the EPO should come to an agreement regarding a uniform standardized format among the three offices.

Response: The final rules are consistent with the harmonization that has been achieved among the EPO, the JPO and the PTO relating to the presentation and exchange of sequence data.

Comment: One comment expressed concern that the lack of inter-linkage with other major gene banks would cause more work and confusion rather than less.

Response: The PTO has consulted with the existing U.S. nucleotide and peptide and protein sequence data libraries during the development of the final rules presented herein. The EPO has also consulted with the major European sequence data libraries. It should also be noted that the existing nucleotide and peptide and protein sequence data libraries in the United States, Europe and Japan have implemented regular exchanges of sequence data.

Comment: Two comments discussed differences between the proposed standard format and that of publication databases, and pointed out the difficulty to applicants in changing the way they currently submit sequence data. The comments alleged that the proposed rules indicate that the standardized format is similar to the GenBank format when, in fact, they are quite different. Also, the rules require separate listings for sequences derived from a single sequence, whereas publication databases do not.

Response: The standardized format is as close to the GenBank format as the Office could come while accommodating the special requirements of patent applications. Many applicants will have to change the way they currently submit sequence data in patent applications, but it will be a one-time change. The benefits to both the applicants and the PTO in terms of improved search capability and higher quality patents should more than compensate for any initial burden that may be experienced by some applicants. Further, GenBank is working with the PTO to produce software that will easily convert the standard GenBank presentation for nucleotides and the standard PIR presentation for peptides to the required PTO submission format. The PTO will make this modified program available to the public.

Comment: One comment questioned whether a DNA or amino acid sequence could still be part of a figure in a patent application, or whether it must be referred to in the format "SEQ ID NO."

Response: Any sequence may still be shown in a figure. Indeed, many significant sequence features may only be demonstrated by a figure. This is especially true in view of the fact that the representation of double stranded nucleotides is not permitted, according to the final rules, in the "Sequence Listing," and many significant nucleotide features, such as "sticky ends" and the like, will only be shown effectively by reference to a drawing figure. Similarly, drawing figures are recommended for use with amino acid sequences to depict structural features of the corresponding protein, such as finger regions and Kringle regions.

Comment: Two comments expressed concern over the need for all applicants to have access to the necessary computer equipment and programs.

Response: To facilitate compliance with the rules, the PTO will make a modified Authorin data input program available to all applicants for the cost of the media. Those applicants for whom compliance with the rules remains a significant hardship may petition for a waiver of the rules. See 37 CFR 1.183.

Comment: Three comments questioned the use of a format which had advantages for production of a "hard copy" document, but would have to be reformatted for database storage and sequence searching. Separate "clean" listings of each nucleic acid and amino acid sequence were recommended.

Response: The software that has been developed for the purpose of the PTO's sequence database readily parses the requisite sequence information from the sequence data that has been formatted primarily for visual presentation and review.

Comment: Two comments stated that the "Recommended" and "Optional" information was unnecessary in identifying the sequence with particularity, would be provided elsewhere in the application and should be eliminated from the rules.

Response: The "Recommended" and "Optional" information has been retained for the purpose of developing, to the extent possible, the most comprehensive database possible for the purpose of searching applications containing sequence data. The "Recommended" and "Optional" information items constitute text database fields that will be text searchable by the search program that will be used by the PTO examiners. While this textual information may be available elsewhere in a given application, it would not be included in a sequence database and thus would not be searchable in the database if it is not included in the "Sequence Listing" and the computer readable copy of the "Sequence Listing."

Comment: Two comments suggested that the PTO train two or three clerks to convert computerized sequence data to the requested format. The comment further stated that it would be easier and cheaper for a clerk to learn to work the software and then use it every day, than to expect inventors and attorneys to relearn the system each time they file an application disclosing a sequence as herein defined.

Response: Conversion at the PTO would involve an unnecessary duplication of effort and would increase the opportunities for the introduction of errors into the database. It is not the intent of the PTO to convert data except in some, as yet unidentified, very exceptional circumstances. The service suggested in the comment can be met appropriately in the private sector.

Comment: Three comments said that the minimum thresholds for sequence length set out by § 1.821(a) were too low, encompassing amino acid

sequences which are easily searchable without computer assistance and incidental nucleotide sequences, such as linkers, which are of no value to a PTO database.

Response: The minimum thresholds have been established for the purpose of developing a database that will facilitate computerized searching for both lengthy and relatively shorter sequences. The limit of four or more amino acids has been established for consistency with limits in place for industry database collections, whereas the limit of ten or more nucleotides, while lower than certain industry database limits, has been established to encompass those nucleotide sequences to which the shortest probe will bind in a stable manner. To raise the lower limit for amino acids to, for example, five amino acids, immediately illustrates the problems associated with higher thresholds. With a limit of five amino acids there would be 20^4 (160,000) possible combinations below this higher threshold versus 20^3 (8,000) or fewer possible combinations below the current threshold. This difference in the number of possible combinations is significant, and plays an important role in effectively searching the applications under consideration.

Comment: Two comments recommended that sequences incidental to the invention not be subject to the rules, and that only claimed sequences be required to be listed. One comment stated that the requirements should not be limited to claimed sequences.

Response: Any disclosed sequence, whether claimed or not, is relevant for the purpose of assessing the prior art. Therefore, it is essential that all sequences, whether only disclosed or also claimed, be included in the PTO database.

Comment: Two comments suggested that sequences included as prior art not be subject to the rules.

Response: In many instances, prior art sequences may generally be referred to by name and a publication reference; in these situations, they need not be listed as part of the "Sequence Listing." However, if recitation of the sequence, i.e., as a string of particular bases or amino acids, is necessary to a discussion of these prior art sequences, it is required that these sequences be included in the "Sequence Listing" for examination purposes.

Comment: One comment inquired as to whether functionally defined sequences could be referred to by function or whether they must be listed.

Response: Any sequence that is disclosed as a sequence, i.e., as a string of particular bases or amino acids, and that otherwise meets the criteria of § 1.821(a), must be set forth as part of the "Sequence Listing." However, a sequence that is referred to only by function need not be listed.

Comment: One comment raised the question of how to deal with variations on listed sequences such as the following: Example (1) allelic variations or "conservatively modified variants thereof," and Example (2) where the sequence "may be deleted at the C-terminus by 1, 2, 3, 4, or 5 residues."

Response: The rules do not encompass the variations listed in Example (1) or (2). In Example (1), the sequences may be described as SEQ ID NO:X and "conservatively modified variants thereof" or allelic variations, if desired. A situation such as that in Example (2), if encompassed by the rules, would introduce far too much complexity into the "Sequence Listings" and the searching database that is currently envisioned. The possible mathematical variations that result from this type of language could reasonably require a "Sequence Listing" that would be thousands of pages in length. In Example (2), only the undeleted sequence needs to be included in the "Sequence Listing," and the sequences may be described as SEQ ID NO:X from which deletions have been made at the C-terminus by 1, 2, 3, 4 or 5 residues. The sequence search database will only contain the undeleted sequence.

Comment: Two comments inquired as to the criteria the PTO would use to determine compliance, and what opportunities would be afforded the applicant to satisfy the regulations. One comment also stated that abandonment is an unduly harsh penalty for failure to comply with the rules.

Response: Applicants will be notified of easily detectable deficiencies early in the application process. Deficiencies of a more sophisticated nature will likely only be detected by the examiner to whom the application is assigned. Applicants whose computer readable forms are damaged in the mail, are not readable, or are missing mandatory elements will be so notified shortly after receipt of the application by the PTO. Other errors or inconsistencies will be noted by the examiner early in the examination process. Upon detection of damage or a deficiency, a notice will be sent to the applicant detailing the damage or deficiency and setting a one month period for response. Extensions of time in which to reply will be available pursuant to 37 CFR 1.136. When an action by the applicant, such as a response to a notice to comply from the PTO, is determined to be a bona fide attempt to comply with the rules and it is apparent that compliance with some requirement has inadvertently been omitted, the opportunity to explain and supply the omission will be given before the question of abandonment will be considered. *See* 37 CFR 1.135(c).

Comment: Two comments questioned the legal significance of sequences in the description which differ from those in the "Sequence Listing."

Response: There should not be many instances where differences occur since sequences which are listed in the "Sequence Listing" should be referred to by the assigned SEQ ID NO within the text of the description and claims. A sequence may be listed as part of a figure which may differ from that listed in the "Sequence Listing." In that case, the rules represent no change from current practice regarding inconsistencies within an application.

Comment: One comment expressed concern over the likelihood of error when referring to a sequence by ID number and the consequences to the applicant of such an error.

Response: There is the possibility that errors will occur. However, referring to sequences by ID number should prove to be less prone to error than actually repeatedly reproducing the sequences.

Comment: One comment suggested that the PTO furnish the applicant with a paper copy of the data as it appears in the PTO's database so that the applicant may ensure that no errors arose in the data transferal.

Response: The PTO will undertake the furnishing of such paper copies after the implementation date of the rules. However, the necessity of continuing this procedure indefinitely will be reviewed once the integrity of the system has been established.

Comment: One comment stated that either the paper copy or the computer readable copy of the "Sequence Listing" must not be correctable by reference to the other. The PTO should clearly state the policy, and needs the right to require (not just "permit") correction of one copy where there are discrepancies.

Response: As set forth in § 1.821(e), the paper copy of the "Sequence Listing" will serve as the official copy of the "Sequence Listing" for the purposes of the patent application file. The PTO would like to permit correction of the paper copy, at the least, during the pendency of a given application by reference to the computer readable copy thereof if both the paper and computer readable forms were submitted at the time of filing of the application and the totality of the circumstances otherwise substantiates the proposed correction. A mere discrepancy between the paper

copy and the computer readable form may not, in and of itself, be sufficient to justify a proposed correction.

Comment: One comment said that if the paper copy is the official copy for priority purposes, it should be corrected (if necessary) within about nine months of the filing date in order to be used for filing under the Paris Convention.

Response: This comment is noted, but compliance with the recommended timing is, of course, contingent upon the discovery of inconsistencies within the Paris Convention priority period. It is expected that some, but certainly not all, discrepancies will be discovered within the priority period. The PTO cannot guarantee that all discrepancies in any part of an application will be discovered within the priority period.

Comment: One comment noted that although the PTO may not consider the computer readable copy to be part of the file wrapper for U.S. application purposes, the possible effect of this additional disclosure on foreign filings based upon the original filing document of the U.S. application has not been addressed or explained.

Response: The rules explicitly state that the computer readable form is merely a copy of the "Sequence Listing," and that the computer readable form will not necessarily be retained as a part of the application file. Section 1.821(e). A certified copy of a U.S. application that is obtained for the purpose of foreign filing will not include any information in computer readable form. However, it will include a copy of the "Sequence Listing." There should be no additional disclosure in the computer readable form relative to the "Sequence Listing." Section 1.821(f) clearly requires a statement that the content of the two is the same must be submitted. These sections were drafted with the foreign priority considerations in mind.

Comment: One comment recommended that the PTO state that an applicant will (rather than "may") be given the opportunity to meet the regulations when a bona fide attempt to comply has been made, but when some item has inadvertently been omitted.

Response: The grant of this further opportunity to comply is dependent upon the nature of the deficiency and the response received in attempt to cure the deficiency. If it is evident that a bona fide attempt to comply has been made, the opportunity to explain and supply the omission will be given before the question of abandonment is considered. No change to existing practice regarding inadvertent omissions is intended or contemplated. *See* 37 CFR 1.135(c).

Comment: Two comments asked what an applicant should do, in view of the rule prohibiting the addition of new matter, if an error in sequencing were discovered after filing an application.

Response: The treatment accorded errors in sequencing will be no different after the implementation date of these rules than that currently accorded errors in sequencing or any other errors that are made in describing the invention in the application as originally filed.

Comment: One comment recommended that applicants not be required to submit additional computer readable copies of the "Sequence Listing" when filing a derivative application (continuation, continuation-in-part, or divisional).

Response: Additional computer readable forms will not be required in derivative or continuing applications if the sequence information is exactly the same as that in a parent application in which a complying computer readable form had been filed. In such situations, applicants must request that the previously submitted computer readable form, or the data thereon, be used in a subsequently filed application in much the same manner as applicants must now request the transfer of drawings in derivative or continuing applications. Section 1.821(e) now explicitly provides for this practice.

Comment: Four comments said the estimate that the proposed rule change would require only an additional 15 minutes was highly unrealistic. One comment noted that the time required to key in all the information other than the sequence data was less than one hour.

Response: The estimated time of approximately fifteen minutes for complying with these rules should not be interpreted as the amount of time necessary to formulate a "Sequence Listing" submission. Rather, the estimated time only relates to the additional amount of time applicants will have to expend to comply with these rules over and above that which they would have expended previously for patent applications. It is submitted that compliance with these rules will involve only the additional submission of relevant application and computer readable form information and a minor, one-time, revision of the format for presenting sequence data, after which no additional expenditure of time for format compliance will be necessary. The time required to submit sequence and any associated information is not included in the above estimate because it is properly assumed that this information would necessarily have been submitted, though possibly in a different format, in applications filed prior to the effective date of these rules.

Comment: One comment asked whether on-line access to the PTO database would be available to the public.

Response: On-line access to the PTO database is not immediately envisioned. The PTO does plan to disseminate the patented or published portion of the database by making the information available to the public.

Comment: Two comments asked whether adequate security measures would be taken to insure that diskettes are properly identified before separation from their files.

Response: Adequate measures will be taken to insure that computer readable forms are properly identified before separation from their files. The labeling procedures required by § 1.825(h) of these final rules should minimize any identification problems.

Comment: One comment asked how the PTO intended to dispose of the disks to insure the secrecy of their contents.

Response: The secrecy of the computer readable forms will be maintained in much the same manner as the secrecy of applications is currently maintained. If computer readable forms are disposed of by the PTO, they will be disposed of in a manner that will preserve the secrecy of their contents.

Comment: One comment recommended that all sequence data meeting the minimum length criteria be routinely subject to the rules, and that a petition should be required when an applicant believes particular sequences are exempt as per 37 CFR 1.821(a).

Response: The suggestion cannot be adopted because the PTO has the burden to establish a lack of compliance with the rules, and the suggested practice would have the effect of placing the burden of establishing the need for compliance with applicants. The burden of proof does not shift to the applicant until the PTO has established a prima facie case of noncompliance.

Comment: One comment suggested that the definition of nucleotide sequences be narrowed to exclude polymers containing other than typical 5′ to 3′ phosphodiester linkages.

Response: The rules have been drafted so as not to exclude the types of sequences that are specifically referred to. The PTO does not want to exclude linkages of the type commonly found in naturally occurring nucleotides, e.g., eukaryotic end capped sequences.

Comment: One comment suggested that the applicability of the rules is overbroad and ambiguous. It was stated that it was unclear whether a single

non-peptidyl linkage removes a peptide from applicability.

Response: Every effort has been made to eliminate ambiguity from the rules. The rules are, nonetheless, procedurally and technologically complex. They must be carefully reviewed in order to gain a comprehensive understanding of them. With regard to the specific question that has been posed, § 1.821(a)(2) was changed to address the point in question. A single non-peptidyl bond does not exclude a given peptide from the scope of the rule.

Comment: Three comments recommended that the depiction of unusual or modified bases and amino acids should be clarified. One of these comments suggested specific language for clarification. The suggested language is as follows:

> A modified base or amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or amino acid is one of those listed in paragraphs (p)(1) or (p)(2) of this section and the modification is also set forth elsewhere in the Sequence Listing (for example, Features § 1.823(b)(2)(ix)). Otherwise, all bases or amino acids not appearing in paragraphs (b)(1) or (b)(2) of this section shall be listed in a given sequence as "N" or "Xaa," respectively, with further information, as appropriate, given elsewhere in the Sequence Listing.

Response: The suggested language has been adopted in § 1.822(b) of the final rule.

Comment: One comment asked that the PTO explicitly state that the rules do not apply to applications that are pending at the time of the rule change.

Response: Only new applications filed after the effective date of the rule change will be subject to the rules; applications which are pending at that time are exempt. Compliance with the rules, on a voluntary basis, is encouraged for applications filed prior to the effective date of these final rules. The final rules will not apply, except on a voluntary basis, to continuation or divisional applications filed after the effective date unless the application upon which 35 U.S.C. 120 priority is claimed was also subject to these rules. The final rules will apply to continuation-in-part applications filed after the effective date where the application upon which 35 U.S.C. 120 priority is claimed was subject to these rules or where the material that is newly added in the continuation-in-part includes sequence information that falls within the requirements of these rules. The final rules will not apply to reissue or reexamination applications filed after the effective date unless the application which matured into the patent sought to be reissued or reexamined was subject to these rules.

Comment: One comment asked whether it would be acceptable for the inventor or the person who actually compares sequence data to sign the statement that the "Sequence Listing" conforms to the computer readable form.

Response: A statement submitted by either of those persons is acceptable as long as it is a verified statement. Any person registered to practice before the PTO may make such a statement, and it does not need to be verified. The statement may be made by any person not registered to practice before the PTO if the statement is a verified statement, i.e., in oath or declaration form.

Comment: Three comments said that the time limits set for compliance in § 1.821(g) were too short and should be extended.

Response: The time limits set are considered reasonable, and those set in § 1.821(g) are extendable pursuant to 37 CFR 1.136.

Comment: One comment noted that the requirement to indicate coding regions of a nucleic acid sequence may be inappropriate.

Response: There has been a misunderstanding of the requirements relating to the depiction of the coding regions in nucleotide sequences as well as the amino acids corresponding to the codons in those coding regions. It should be noted that the rules do not, in any way, require the depiction of coding regions or the amino acids corresponding to the codons in those coding regions. Paragraph (d) of § 1.822 only requires that where amino acids corresponding to the codons in the coding parts of a nucleotide sequence are depicted, they must be depicted *below* the corresponding codons. (Emphasis added.) There is absolutely no requirement in the rules to depict coding regions. Nor is there a requirement to separately list the amino acid sequence unless the applicant desires to discuss the amino acids as a separate sequence. That is, when the coding parts of a nucleotide sequence and their corresponding amino acids have been identified, if applicant desires to discuss those amino acids in the coding parts of the nucleotide as a separate sequence, those amino acids must also be set forth as a separate sequence. These requirements do not alter, in any way, the requirements of 35 U.S.C. 112. The separate submission of the amino acid sequence that corresponds to the coding parts of a nucleotide sequence is, however, recommended and encouraged because the amino acid sequence may not be captured in the sequence database if it is only presented in the mixed-mode format.

Comment: One comment noted that the requirement to list nucleotide coding regions as groupings of codons becomes redundant when the same sequence must be listed for each reading frame, and may be irrational for those circumstances where a single base insertion or deletion causes a change in the reading frame.

Response: As noted above, there is no requirement in the rules to depict coding regions of nucleotides. However, when an applicant does elect to depict coding regions, the rules require that they be depicted in a uniform manner.

Comment: One comment noted that the term "mature protein" should be better defined. The requirement to number amino acids based on the determination of the mature protein is unnecessary and could lead to litigation problems. Further, the designation of pre- and pro-sequences may be impossible and is irrelevant to the search.

Response: Section 1.822(m) of the rules as adopted sets forth a procedure for numbering amino acid sequences that is an alternative to the procedure involving the identification of the mature protein. Sequences can either be numbered based upon the identification of the mature protein or based upon the first amino acid at the amino terminal as number 1.

Comment: Two comments noted that the rules did not provide for the depiction of codons that span intron/exon junctions.

Response: The rules as adopted now provide for the depiction of codons that span intron/exon junctions in § 1.822(d).

Comment: One comment asked how to represent regions where two proteins are coded on opposite strands of DNA and overlap.

Response: Since the final rules do not permit the representation of double stranded nucleotides, each DNA strand must be listed separately. In this situation, each DNA strand may be listed with its corresponding amino acid sequence, and the relationship between the two may be shown in a drawing figure.

Comment: One comment noted that the rules do not provide for the representation of differentially spliced gene sequences which lead to the expression of two different amino acid sequences from a single gene or mRNA.

Response: The rules do not contemplate the depiction of more than one amino acid sequence together with a single nucleotide sequence. Therefore, a differentially spliced nucleic acid

sequence requires separate listings. The information may be represented by separate listings for each sequence, i.e., one nucleotide sequence and two amino acid sequences, or by listing the nucleic acid sequence twice, once with each of the different amino acid sequences. The relationship between them may also be shown in a drawing figure.

Comment: One comment recommended that applicants have the option of presenting the amino acid sequence in the one-letter form.

Response: The use of the three-letter code in the "Sequence Listing" is preferred for ease of examination. However, the modified Authorin program allows applicants to input amino acid sequences using one-letter codes or three letter codes, and will convert, where necessary, one-letter codes to the appropriate three-letter codes for the "Sequence Listing."

Comment: One comment suggested that the wording of § 1.822(p), regarding the presentation of partial sequences, subsequences and discontinuous sequences, be clarified.

Response: This language has been clarified, and can be found in § 1.822(o) as adopted.

Comment: One comment noted that there are no known naturally occurring circular amino acid sequences and that § 1.822(o) need not distinguish between circular and linear polypeptide sequences.

Response: Section 1.822(o) as proposed is now set forth in § 1.822(n) as adopted. Sequences in patent applications are not limited to those that occur naturally. Synthetic sequences are encompassed by the rules.

Comment: Three comments recommended that the PTO state explicitly that the applicant will in no way be held liable for omissions of optional or recommended items, and that the PTO would make no interpretations therefrom.

Response: The suggestion has been adopted in § 1.821(i) of the rules.

Comment: One comment recommended that the number of sequences presented in the "Sequence Listing" be included under the General Information section as a check for completeness during application processing.

Response: The suggestion has been adopted in § 1.823(b)(1)(iii) of the rules.

Comment: One comment mentioned that it was confusing to describe the items CURRENT APPLICATION DATA and PRIOR APPLICATION DATA as mandatory while saying that they are to be omitted if the information is unknown or inapplicable.

Response: The requirement for this information is similar to that currently set forth in 37 CFR 1.5. Each of the above items of information must be submitted if they are known to applicant or applicable in a given application, respectively.

Comment: One comment suggested that the PUBLICATION STATUS section be revised to accommodate patent citations.

Response: The suggestion has been adopted in § 1.823(b)(2)(x).

Comment: One comment said that the many levels of identifiers and sub-identifiers introduced unnecessary complexity.

Response: The items of information in § 1.823 have been reviewed and several levels of identifiers and sub-identifiers have been deleted.

Comment: One comment recommended that § 1.823(b)(1)(ix) not include the items Base Pairs and Amino Acids since that information would be known from the kind of sequence listed.

Response: The suggestion has been adopted in § 1.823(b)(2)(x) of the rules.

Comment: One comment suggested that § 1.823(b)(2)(i) include "Not known to applicant" as a valid response to TOPOLOGY and STRANDEDNESS items.

Response: The suggestion has been adopted in § 1.823(b)(2)(i).

Comment: One comment suggested that "anti-sense DNA" and "anti-sense RNA" be added as a valid response under KIND in § 1.823(b)(2)(ii).

Response: A separate information item has been provided for molecule types that have anti-sense characteristics. It is in § 1.823(b)(2)(iv) as adopted.

Comment: One comment said that "Specific Organelle" was not a proper response to Kind, but was a sub-identifier under "Organelle DNA" and "Organelle RNA."

Response: All organelle information will be collected in § 1.823(b)(2)(vi)(l) as adopted.

Comment: One comment recommended that the heading KIND be used only once and the "Peptide or protein" information be listed under that single heading.

Response: The suggestion has been adopted in § 1.823(b)(2)(ii).

Comment: One comment suggested that "Whole" be included as a proper response to Peptide or protein FRAGMENT TYPE.

Response: This suggestion has not been adopted because it is presumed that no response will be given for FRAGMENT TYPE if the sequence is "Whole."

Comment: One comment suggested that NAME be added as a sub-identifier under the FEATURES section.

Response: The suggestion has been adopted in § 1.823(b)(2)(ix)(A).

Comment: One comment suggested that § 1.824(f) be modified to include ¼" tape cartridge as an acceptable magnetic medium. One comment suggested that computer readable forms produced by Digital Equipment Corporation (DEC) systems be acceptable.

Response: These suggestions have not been adopted. The initially acceptable computer readable forms and computer systems are limited to those set forth in § 1.824 (a) and (f), respectively. It should be noted that any computer operating system may be utilized to produce a sequence submission, provided that the system is capable of producing a file having the characteristics specified in § 1.824 and capable of writing the properly formatted file to one of the acceptable diskettes or tapes.

Comment: One comment suggested that the PTO accept any computer readable form which is acceptable to the EPO or JPO.

Response: It is likely that, with the exception of the EPO's acceptance of optical character readable documents, the PTO will be more liberal than both the EPO and the JPO with regard to acceptable computer readable forms. The JPO will not accept any computer readable forms.

Comment: One comment recommended that where a yes/no response is desired for an item of information, it should be indicated in the parenthetical information following that item.

Response: The suggestion has been adopted throughout § 1.823(b) of the rules.

Comment: One comment suggested that a provision be made to allow a sequence listing to be the figure published in the *Official Gazette* at issuance.

Response: The PTO is exploring the feasibility of adopting this suggestion. If adopted, the Manual of Patent Examining Procedure will be revised to accommodate this suggestion.

Discussion of Specific Sections

Section 1.821 Nucleotide and/or Amino Acid Sequence Disclosures in Patent Applications

Section 1.821(a) presents a definition for "nucleotide and/or amino acid sequences." This definition sets forth limits, in terms of numbers of amino acids and/or numbers of nucleotides, at

or above which compliance with the rules that follow is required. Further, compliance with the rules is only required for unbranched sequences. Branched sequences are specifically excluded from the scope of the rules. The limit of four or more amino acids has been established herein for consistency with limits in place for industry database collections whereas the limit of ten or more nucleotides, while lower than certain industry database limits, has been established to encompass those nucleotide sequences to which the smallest probe will bind in a stable manner. Specifically, the amino acid limit is consistent with the limits in place in industry database collections, such as the National Biomedical Research Foundation Protein Identification Resource (NBRF–PIR; Washington, DC) database and the International Protein Information Database in Japan (JIPID; Tokyo). NBRF–PIR may include sequences having fewer than four amino acids but this is considered by the PTO to be too low because amino acid sequences with three amino acids can readily be manually searched as chemical structures rather than as sequences of the type to be submitted under these rules. The limits for amino acids and nucleotides are also consistent with those established for sequence data exchange with the JPO and the EPO.

Sections 1.821(a)(1) and 1.821(a)(2) present further definitions for those nucleotide and amino acid sequences that are intended to be embraced by the rules that follow. Nucleotide sequences are further limited to those that can be represented by the symbols set forth in § 1.822(b)(1). Amino acid sequences are further limited to those listed in § 1.822(b)(2) and those L-amino acids that are commonly found in naturally occurring proteins. The limitation to L-amino acids is based upon the fact that there currently exists no widely accepted standard nomenclature for representing the scope of amino acids encompassed by non-L-amino acids, and, as such, the process of meaningfully encoding these other amino acids for computerized searching and printing is not currently feasible. The previous limitation that "[o]nly peptides or proteins containing normal peptide bonds are embraced" by the rule has been deleted from the final rules in favor of a more liberal standard that states that the rules embrace "[a]ny peptide or protein that can be expressed as a sequence using the symbols in § 1.822(b)(2) in conjunction with a description elsewhere in the "Sequence Listing" to describe, e.g., modified linkages, cross links, end caps, non-peptidyl bonds, etc." The use of the terms "peptide or protein" implies, however, that the amino acids in a given sequence are linked by at least three consecutive peptide bonds. Accordingly, an amino acid sequence will not be excluded from the scope of the rules merely due to the presence of a single non-peptidyl bond. If an amino acid sequence can be represented by a string of amino acid abbreviations, with reference, where necessary, to a features table to explain modifications in the sequence, the sequence comes within the scope of the rules. However, the rules are not intended to encompass the subject matter that is generally referred to as synthetic resins.

Section 1.821(b) requires exclusive conformance, with regard to the manner in which the nucleotide and/or amino acid sequences are presented and described, with the rules that follow for all applications that include nucleotide and amino acid sequences that fall within the above definitions. This requirement is necessary to minimize any confusion that could result if more than one format for representing sequence data was employed in a given application. It is also expected that the preferred standard format will be more readily and widely accepted and adopted if its use is exclusive, as well as mandatory.

Section 1.821(c) requires that applications containing nucleotide and/or amino acid sequences that fall within the above definitions, contain, as a separate part of the disclosure on paper copy, a disclosure of the nucleotide and/or amino acid sequences, and associated information, using the format and symbols that are set forth in §§ 1.822 and 1.823. This separate part of the disclosure on paper copy will be referred to as the "Sequence Listing," and requires that each sequence disclosed in the application appear separately in the "Sequence Listing," with each sequence further being assigned a sequence identification number, referred to as "Seq ID No." A plurality of sequences may, if feasible, be presented on a single page, and this may be extended to the separate presentation of both nucleotide and amino acid sequences on the same page. The requirement for sequence identification numbers, at a minimum, requires that each sequence be assigned a different number for purposes of identification. However, where practical and for ease of reference, sequences should be presented in the separate part of the application in numerical order.

Section 1.821(d) requires the use of the assigned sequence identifier in all instances where the description or claims of a patent application discuss sequences regardless of whether a given sequence is also embedded in the text of the description or claims of an application. This requirement is also intended to permit references, in both the description and claims, to sequences set forth in the "Sequence Listing" by the use of assigned sequence identifiers without repeating the sequence in the text of the description or claims.

Section 1.821(e) requires the submission of a copy of the "Sequence Listing" in computer readable form. The computer readable form will be used by the PTO to establish a database for searching and printing nucleotide and amino acid sequences. This electronic database will also enable the PTO to exchange patented sequence data, in electronic form, with the JPO and the EPO. It should be noted that the PTO's database will comply with the confidentiality requirement imposed by 35 U.S.C. 122. That is, the PTO will not exchange or make public any information on any sequence until the patent application containing that information matures into a patent.

The second sentence of § 1.821(e) indicates that, as between the paper copy of the "Sequence Listing" and the computer readable copy thereof, the paper copy would serve as the official copy. However, the PTO would like to permit correction of the paper copy, at the least, during the pendency of a given application by reference to the computer readable copy thereof if both the paper and computer readable forms were submitted at the time of filing of the application and the totality of the circumstances otherwise substantiate the proposed correction. A mere discrepancy between the paper copy and the computer readable form may not, in and of itself, be sufficient to justify a proposed correction. In this regard, the PTO will assume that the computer readable form has been incorporated by reference into the application, when the paper and computer readable forms were submitted at the time of filing of the application. The PTO will attempt to accommodate or address all correction issues, but it must be kept in mind that the real burden rests with the applicant to ensure that discrepancies between the paper copy and the computer readable form are minimized. Applicants should be aware that there will be instances where the applicant may have to suffer any consequences of discrepancies between the two. All

corrections would be made by appropriate fee-paid petitions. The paper copy would also serve as the official copy for priority purposes. The PTO does not desire to be bound by a requirement to permanently preserve computer readable forms for support, priority or correction purposes. For example, the PTO will make corrections, where appropriate, by reference to the computer readable form as long as the computer readable form is still available to the PTO. However, once use to the PTO for processing has ended, i.e., once the PTO has entered the data contained on the computer readable form into the appropriate database, the PTO does not intend to further preserve the computer readable form submitted by the applicant.

The last two sentences of § 1.821(e) set forth the procedure to be followed when a computer readable form of a new application is identical with a computer readable form of another application. In that situation, an applicant may make reference to the other application and computer readable form in lieu of filing a duplicate computer readable form in the new application.

Section 1.821(f) requires that the paper and computer readable copies of the "Sequence Listing" be accompanied by a statement that the content of the paper and computer readable copies are the same, at the time when the computer readable form is submitted. This statement must be a verified statement if it is made by a person not registered to practice before the PTO. Such a statement may be made by the applicant.

Section 1.821(g) requires compliance with the requirements of paragraphs (b) through (f), as discussed above, if they are not satisfied at the time of filing under 35 U.S.C. 111 or at the time of entering the national stage of an international application under 35 U.S.C. 371, within one month from the date of a notice requiring compliance. Failure to comply will result in the abandonment of the application. Submissions in response to requirements under this paragraph must be accompanied by a statement that the submission includes no new matter. This statement must be a verified statement if made by a person not registered to practice before the PTO. Again, such a statement may be made by the applicant. Extensions of time in which to reply to a requirement under this paragraph are available pursuant to 37 CFR 1.136. When an action by the applicant is a bona fide attempt to comply with these rules and it is apparent that compliance with some requirement has inadvertently been omitted, the opportunity to explain and supply the omission will be given before the question of abandonment is considered. See 37 CFR 1.135(c).

Section 1.821(h) requires compliance with the requirements of paragraphs (b) through (f), as discussed above, within one month from the date of a notice requiring compliance in an international application filed in the United States Receiving Office under the Patent Cooperation Treaty (PCT), if the above noted requirements are not satisfied at the time of filing. Submissions in response to requirements under this paragraph must be accompanied by a statement that the submission does not include new matter or go beyond the disclosure in the international application as filed. This statement must be a verified statement if made by a person not registered to practice before the PTO. Such a statement may be made by an applicant. International applications that fail to comply with any of the requirements of paragraphs (b) through (f) of this section will be searched to the extent possible without the benefit of the information in computer readable form.

Section 1.821(i) makes clear that neither the presence nor absence of information which is not required under the rules will create a presumption that such information is necessary to satisfy any of the requirements of 35 U.S.C. 112. Further, this paragraph states that the grant of a patent on an application that is subject to §§ 1.821 through 1.825 constitutes a conclusive presumption that the granted patent complies with the requirements of these rules. This paragraph has been added to address the concerns with respect to the weight that may ultimately be accorded an omission of an item of information which is not required under the rule, regardless of whether that item has been designated as "recommended" or "optional."

Section 1.821(j) has been added to facilitate administrative processing of all application papers, computer readable forms and fees filed under this section. Accordingly, all such application papers, computer readable forms and fees filed in the PTO should be marked "Box SEQUENCE."

Section 1.822—Symbols and Format To Be Used for Nucleotide and/or Amino Acid Sequence Data

Section 1.822 sets forth the format and symbols to be used for listing nucleotide and/or amino acid sequence data. The codes for representing the nucleotide and/or amino acid characters in the sequences are set forth in the tables of paragraphs (b)(1) and(b)(2) of this section. For the purpose of setting forth the sequence in the "Sequence Listing," only those symbols in paragraph (b)(1) for "Base codes" and in paragraph (b)(2) for "Amino acids" are to be used, as further set forth in paragraphs (c) and (e) of this section. No other symbols shall be used in nucleotide and amino acid sequences. The "Modified base controlled vocabulary" in paragraph (p)(1) and the "Modified and unusual amino acids" in paragraph (p)(2) are not to be used in setting forth the sequences; but, they may be used in the description and/or the "Sequence Listing" corresponding to, but not including, the sequence itself. However, a modified base or amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or amino acid is one of those listed in paragraphs (p)(1) or (p)(2) of this section and the modification is also set forth elsewhere in the "Sequence Listing;" for example, in the features table. Otherwise, all bases or amino acids not appearing in paragraphs (b)(1) or (b)(2) of this section must be listed in a given sequence as "N" or "Xaa," respectively, with further information given elsewhere in the "Sequence Listing."

In paragraphs (b)(2) and (e) of § 1.822, the use of three-letter codes for amino acids is required. The use of the three-letter codes for amino acids is preferred over the one-letter codes from the perspective of facilitating the examiner's review of the application papers, including the "Sequence Listing", and the public's, as well as the examiner's, use of the printed patents. The modified Authorin program that the PTO will make available to the public will have the capability of converting from one-to three-letter amino acid codes and printing the amino acid sequence in three-letter codes regardless of input.

Paragraphs (d) through (p) of § 1.822 set forth the format for presenting sequence data. These paragraphs set forth the manner in which the characters in sequences are to be grouped, spaced, presented and numbered.

It should be noted that paragraph (d) of this section requires that amino acids corresponding to codons in the coding parts of a nucleotide sequence be listed below the corresponding codons.

This is the opposite of the location set forth in the proposed rules. The fact that the representation of double stranded nucleotide sequences will not be permitted in the "Sequence Listings" has obviated the need to accommodate those situations in which the coding regions of the primary coding strand of a

double stranded nucleotide sequence and the amino acids corresponding to the codons in the coding strand of that nucleotide sequence are depicted. In those situations, it was considered that the correspondence between the amino acids and the codons in the primary coding strand could most clearly be illustrated by positioning the amino acids above the nucleotides rather than below the nucleotides, as is more conventionally done. This arrangement was then, for the purpose of consistency, extended to the representation of all amino acids that corresponded to codons in the coding regions of a nucleotide sequence. As stated above, because double stranded nucleotides will not be permitted in the "Sequence Listing," there is no longer a need to depict amino acids above corresponding codons. As such, paragraph (d) as adopted requires the depiction of amino acids corresponding to codons in the coding parts of a nucleotide sequence immediately below, not above, the corresponding codons. Further, in paragraph (d) of this section, the situation in which a codon spans an intron has been addressed. In those situations, the "amino acid symbol shall be typed below the portion of the codon containing two nucleotides." This sentence was added to clarify the representation of an amino acid that corresponds to a codon that spans an intron.

In view of the number of comments that were received in which there was a misunderstanding of the requirements relating to the depiction of the coding regions in nucleotide sequences as well as the amino acids corresponding to the codons in those coding regions, it should be noted that the rules do not, in any way, require the depiction of coding regions or the amino acids corresponding to the codons in those coding regions. Paragraph (d) of this section only requires that where amino acids corresponding to the codons in the coding parts of a nucleotide sequence *are* depicted, they must be depicted *below* the corresponding codons. (Emphasis added.) There is absolutely no requirement in the rules to depict coding regions. Nor is there a requirement to separately list the amino acids corresponding to the codons in the coding parts of a nucleotide sequence unless the applicant desires to discuss the amino acids as a separate sequence. That is, when the coding parts of a nucleotide sequence and their corresponding amino acids have been identified, if applicant desires to discuss those amino acids in the coding parts of the nucleotide as a separate sequence, those amino acids must also be set forth as a separate sequence. The separate submission of the amino acid sequence that corresponds to the coding parts of a nucleotide sequence is, however, recommended and encouraged because the amino acid sequence may not be captured in the sequence database if it is only presented in the mixed-mode format.

Paragraphs (f) through (i) of this section are considered to be self-explanatory.

Paragraph (j) of this section states that nucleotide sequences shall only be represented by a single strand, in the 5' to 3' direction, from left to right. That is, double stranded nucleotides shall not be represented in the "Sequence Listing." A double stranded nucleotide may be represented as two single stranded nucleotides, and any relationship between the two may be shown in the drawings.

The presentation and enumeration procedures for amino acid sequences are set forth in paragraphs (k) and (m) of this section. Two alternatives are presented for numbering amino acid sequences. Amino acid sequences may be numbered with respect to the identification of the first amino acid of the first mature protein or with respect to the first amino acid appearing at the amino terminal. The enumeration procedure for nucleotides is set forth in paragraph (l) of this section. Sequences that are circular in configuration are intended to be encompassed by these rules, and numbering procedures for them are provided in paragraph (n) of this section.

The numbering procedures set forth in paragraphs (k) through (n) of this section are not necessarily intended to be consistent with all currently employed numbering procedures. The objective here is to establish a reasonable numbering procedure that can readily be followed and adhered to in the future. As a whole, these formatting procedures also reflect those that have been agreed to for electronic data exchange with the JPO and the EPO.

In paragraph (o) of this section the procedures for presenting and numbering gapped and hybrid sequences are set forth. The reference to partial sequences in the proposed rule has been deleted because a partial sequence would necessarily be numbered as a separate sequence. A sequence that is made up of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence. As previously noted, these changes have been made to address the concerns that the requirements for presentation and numbering of partial, gapped and hybrid sequences were ambiguous.

Paragraph (p) of this section provides the codes for representing modified nucleotide bases and modified and unusual amino acids. The use of the codes set forth in paragraph (p) of this section is discussed above.

Section 1.823—Requirements for Nucleotide and/or Amino Acid Sequences As Part of the Application Papers

Section 1.823 sets forth the informational requirements for inclusion in the separate part of the disclosure on paper copy that would be submitted in accordance with § 1.821(c). This section lists the items of information that are to be included in the "Sequence Listing," which constitutes the separate part of the disclosure on paper copy. The items of information are to be presented in the "Sequence Listing," immediately preceding the actual nucleotide and/or amino acid sequence, in the order in which those items are listed in this section. Page and line length requirements are set forth. The requirement to use a fixed width font to present sequence data is also set forth. This latter requirement is made to ensure that the desired sequence character spacing and numbering is maintained upon printing. The heading for each item of information shall not include the parenthetical explanatory information included in this section.

In § 1.823, the items of information are broken down into two categories. The first category is directed to "GENERAL INFORMATION" and includes information relating to the application being filed and the diskette/tape being submitted. It is likely that this information will be applicable for all sequences and, as such, will need to be set forth only once in a given "Sequence Listing." The second category is directed to "INFORMATION FOR SEQ ID NO: X" and includes information that, most likely, will be specific for each sequence disclosed. Where more than one sequence is disclosed, this category will be repeated and subsequent headings should be set forth as: "(2) INFORMATION FOR SEQ ID NO: 2:," "(2) INFORMATION FOR SEQ ID NO: 3:," etc. Throughout the above two categories, the items of information are further broken down into categories relating to whether their submission is mandatory (M), recommended (R) or optional (O). Certain items are also designated as those that may repeat (rep) in a given "Sequence Listing." The

numbering of repeated items should remain constant so that the overall numbering scheme of the "Sequence Listing" conforms to that specified in this section. The first category includes those items for which inclusion in the "Sequence Listing" is mandatory. These mandatory items of information relate to the patent application, the computer readable form, basic sequence data and the applicable priority or PCT data. A new mandatory item of information, relative to those set forth in the proposed rules, has been added to these final rules. This item relates to the number of sequences set forth in the "Sequence Listing." The reference in paragraph (b)(1)(vi)(C) of § 1.823 to "F-terms" relates to the key-word indexing of patents that is being undertaken by the JPO in conjunction with their automation plans. The second category includes those items for which inclusion in the "Sequence Listing" is recommended, but not required. These recommended items of information provide further information relating to the sequence listed. These additional items of information are of interest to examiners and will create a more comprehensive database; as a result, the items would serve to facilitate sequence searching. The third category includes items of information that are primarily for the purpose of providing more complete information upon dissemination, for which inclusion in the "Sequence Listing" is also optional.

Throughout paragraphs (b)(1) and (b)(2) of § 1.823, the items of information relating to patent applications and patent publications should be provided, keeping in mind the appropriate standards that have been established by the World Intellectual Property Organization (WIPO).

In paragraph (b)(1)(i) of § 1.823, the item of information relating to "APPLICANT" should be limited to a maximum of the first ten named applicants in the application. Similarly, in paragraph(b)(2)(x) of § 1.823, the item of information relating to "Authors" should be limited to a maximum of the first ten named authors in the publication.

In paragraph (b)(2)(ix) of § 1.823, relating to "FEATURES" or the description of the points of biological significance in a given sequence, it is recommended, but not required, that the information that is provided by the applicant conform to the controlled vocabulary that is set forth in GenBank's "Feature Representation in Nucleotide Sequence Data Libraries," Release 57.0, as may be amended. Further, the feature "LOCATION" should be specified using the syntax of the DDBJ/EMBL/GenBank Feature Table Definition.

In paragraph (b)(2)(x) of § 1.823, publication information for a given sequence is collected.

The publication information encompasses both patent-type publications and non-patent literature publications. Information item "(K) RELEVANT RESIDUES IN SEQ ID NO: X" is intended to collect information relating to the correspondence between a sequence set forth in the "Sequence Listing" and published sequence information. The starting (FROM) and end (TO) positions in the listed sequence that correspond to the published sequence information should be set forth.

A sample "Sequence Listing" is included as appendix A, following this notice. As indicated in the sample "Sequence Listing," only information that is applicable to a given sequence need be listed in the "Sequence Listing." The sample "Sequence Listing" also serves to illustrate that when the coding parts of a nucleotide sequence and their corresponding amino acids have been identified, if applicant desires to discuss those amino acids in the coding parts of the nucleotide as a separate sequence, those amino acids must also be set forth as a separate sequence. In the given sample, it can be assumed that the applicant desired to discuss the amino acids as a separate sequence. This convention will minimize ambiguities that may result in those instances where the amino acids corresponding to the coding parts of a nucleotide sequence constitute two separate amino acid sequences. In those instances, if an applicant desires to discuss the two separate amino acid sequences, they must be separately presented in the "Sequence Listing." Further, in those instances when applicant desires to discuss, as separate sequences, all three reading frames of the coding regions of a nucleotide sequence, six separate sequences should be set forth in the "Sequence Listing" to minimize confusion. These six sequences would include three nucleotide sequences separately showing each of the three reading frames of the coding regions of the sequence and three separate amino acid sequences corresponding to the translation of the three reading frames of the nucleotide sequence. A complete listing of abbreviated headings for all items of information is provided in Appendix B, also following this notice. For purposes of clarity, the appropriate responses for "(ii) Molecule Type" are also set forth in Appendix B, but only those that are applicable should be included in a given "Sequence Listing." After the heading for each item in the "Sequence Listing," the appropriate information or a yes/no answer should be provided. Where "Seq ID No: X" appears, the appropriate sequence identification number should be provided.

Section 1.824—Form and Format for Nucleotide and/or Amino Acid Sequence Submissions in Computer Readable Form

Section 1.824 sets forth the form for sequence submissions in computer readable form. Any computer operating system may be utilized to produce a sequence submission, provided that the system is capable of producing a file having the characteristics specified in § 1.824, and is capable of writing the properly formatted file to one of the acceptable diskettes or tapes. Currently, the computer readable form is being limited to diskettes or tapes. However, as noted above, it is contemplated that this may be broadened in the future in light of progress in the technology for developing and establishing databases of this type. That is, it is possible that this may be broadened in the future to encompass other media and formats. If a given sequence and its associated information cannot practically or possibly fit on a single diskette or tape, as is required in paragraph (d) of this section, an exception via a non-fee petition to waive this provision will normally be granted. As set forth in paragraph (g) of § 1.824, the computer readable forms that are submitted in accordance with these rules will not be returned to the applicant. Paragraph (h) of § 1.824 requires the labeling, with appropriate identifying information, of the computer readable forms that are submitted in accordance with these rules.

Section 1.825—Amendments to or Replacement of Sequence Listing and Computer Readable Copy Thereof

Section 1.825 sets forth the procedures for amending the "Sequence Listing" and the computer readable copy thereof. The procedures that have been defined in this section involve the submission of either substitute sheets of the "Sequence Listing" or substitute copies of the computer readable form, in conjunction with statements that indicate support for the amendment in the application, as filed, and that the substitute sheets or copies include no new matter. The requirement for statements regarding the absence of new matter follows current practice relating to the submission of substitute specifications, as set forth in 37 CFR 1.125. Paragraph (c) of § 1.825

explicitly addresses the situation where amendments to the "Sequence Listing" are made after a patent has been granted, e.g., by a certificate of correction, reissue or reexamination. Paragraph (d) of § 1.825 addresses the possibility and presents a remedy for the situation where the computer readable form may be found by the PTO to be damaged or unreadable.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354) due to the limited number of entities, both small and otherwise, that are involved in the relevant technology. Further, the costs associated with the rule change would not have a significant impact on overall costs associated with filing patent applications because the rule change adopts standards, procedures, and formats which are becoming industry and international norms.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Patent and Trademark Office has also determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The rule contains a collection of information subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Collections of information relating to patent applications have previously been approved by the Office of Management and Budget under code 0651–0011. For the great majority of applications that will be filed having nucleotide and amino acid sequences falling within the limits defined herein, applicants will not have to expend any substantial extra time to comply with these rules over and above that previously approved for patent applications. For the most part and as noted above with regard to current practice in the industry, the required information will have already been keyed into a computer system. As such, compliance with these rules will involve only the additional submission of relevant application and computer readable form information and a minor, one-time, revision of the format for presenting sequence data, after which, no additional expenditure of time for format compliance will be necessary. Any burden that may be attributed to the submission of relevant application and computer readable form information may, in fact, be more than offset by the fact that compliance with these rules will have the substantial benefit of reducing the overall time necessary to prepare applications, because a given sequence will only have to be set forth once in an application and further references thereto will be made by means of a sequence identifier. Accordingly, compliance with these rules is estimated to take approximately fifteen additional minutes, including time for reviewing instructions, maintaining data needed, and completing and reviewing the collection of information. This collection of information has been approved by the Office of Management and Budget under code 0651–0024, due to expire on June 30, 1992. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Organization, Patent and Trademark Office, Washington, DC 20231; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Paperwork Reduction Project 0651–0024.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record-keeping requirements, Small businesses.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office is amending title 37 of the Code of Federal Regulations as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

Application Disclosures Containing Nucleotide and/or Amino Acid Sequences

1. A new, undesignated center heading, new §§ 1.821–1.825, and new appendices A and B are added to subpart G as follows:

Subpart G—Biotechnology Invention Disclosures

Sec.

Authority: 35 U.S.C. 6 unless otherwise noted.

Application Disclosures Containing Nucleotide and/or Amino Acid Sequences

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

(a) Nucleotide and/or amino acid sequences as used in §§ 1.821 through 1.825 is interpreted to mean an unbranched sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides. Branched sequences are specifically excluded from this definition. Nucleotides and amino acids are further defined as follows:

(1) *Nucleotides* are intended to embrace only those nucleotides that can be represented using the symbols set forth in § 1.822(b)(1). Modifications, *e.g.*, methylated bases, may be described as set forth in § 1.822(b), but shall not be shown explicitly in the nucleotide sequence.

(2) *Amino acids* are those L-amino acids commonly found in naturally occurring proteins and are listed in § 1.822(b)(2). Those amino acid sequences containing D-amino acids are not intended to be embraced by this definition. Any amino acid sequence that contains post-translationally modified amino acids may be described as the amino acid sequence that is

initially translated using the symbols shown in § 1.822(b)(2) with the modified positions, *e.g.*, hydroxylations or glycosylations, being described as set forth in § 1.822(b), but these modifications shall not be shown explicitly in the amino acid sequence. Any peptide or protein that can be expressed as a sequence using the symbols in § 1.822(b)(2) in conjunction with a description elsewhere in the "Sequence Listing" to describe, for example, modified linkages, cross links and end caps, non-peptidyl bonds, etc., is embraced by this definition.

(b) Patent applications which contain disclosures of nucleotide and/or amino acid sequences, in accordance with the definition in paragraph (a) of this section, shall, with regard to the manner in which the nucleotide and/or amino acid sequences are presented and described, conform exclusively to the requirements of §§ 1.821 through 1.825.

(c) Patent applications which contain disclosures of nucleotide and/or amino acid sequences must contain, as a separate part of the disclosure on paper copy, hereinafter referred to as the "Sequence Listing," a disclosure of the nucleotide and/or amino acid sequences and associated information using the symbols and format in accordance with the requirements of §§ 1.822 and 1.823. Each sequence disclosed must appear separately in the "Sequence Listing." Each sequence set forth in the "Sequence Listing" shall be assigned a separate identifier written as SEQ ID NO:1, SEQ ID NO:2, SEQ ID NO:3, etc.

(d) Where the description or claims of a patent application discuss a sequence listing that is set forth in the "Sequence Listing" in accordance with paragraph (c) of this section, reference must be made to the sequence by use of the assigned identifier, in the text of the description or claims, even if the sequence is also embedded in the text of the description or claims of the patent application.

(e) A copy of the "Sequence Listing" referred to in paragraph (c) of this section must also be submitted in computer readable form in accordance with the requirements of § 1.824. The computer readable form is a copy of the "Sequence Listing" and will not necessarily be retained as part of the patent application file. If the computer readable form of a new application is to be identical with the computer readable form of another application of the applicant on file in the Office, reference may be made to the other application and computer readable form in lieu of filing a duplicate computer readable form in the new application. The new application shall be accompanied by a letter making such reference to the other application and computer readable form, both of which shall be completely identified.

(f) In addition to the paper copy required by paragraph (c) of this section and the computer readable form required by paragraph (e) of this section, a statement that the content of the paper and computer readable copies are the same must be submitted with the computer readable form. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(g) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing under 35 U.S.C. 111 or at the time of entering the national stage under 35 U.S.C. 371, applicant has one month from the date of a notice which will be sent requiring compliance with the requirements in order to prevent abandonment of the application. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission includes no new matter. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(h) If any of the requirements of paragraphs (b) through (f) of this section are not satisfied at the time of filing, in the United States Receiving Office, an international application under the Patent Cooperation Treaty (PCT) applicant has one month from the date of a notice which will be sent requiring compliance with the requirements, or such other time as may be set by the Commissioner, in which to comply. Any submission in response to a requirement under this paragraph must be accompanied by a statement that the submission does not include new matter or go beyond the disclosure in the international application as filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(i) Neither the presence nor the absence of information which is not required under §§ 1.821 through 1.825, in an application shall create any presumption that such information is necessary to satisfy one or more of the requirements of 35 U.S.C. 112. Further, the grant of a patent on an application that is subject to the requirements of §§ 1.821 through 1.825 shall constitute a conclusive presumption that said patent complies with the requirements of §§ 1.821 through 1.825.

(j) Envelopes containing only application papers, computer readable forms and fees filed under this section should be marked "Box SEQUENCE."

§ 1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.

(a) The symbols and format to be used for nucleotide and/or amino acid sequence data shall conform to the requirements of paragraphs (b) through (p) of this section.

(b) The code for representing the nucleotide and/or amino acid sequence characters shall conform to the code set forth in the tables in paragraphs (b)(1) and (b)(2) of this section. No code other than that specified in this section shall be used in nucleotide and amino acid sequences. A modified base or amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or amino acid is one of those listed in paragraphs (p)(1) or (p)(2) of this section and the modification is also set forth elsewhere in the Sequence Listing (for example, FEATURES § 1.823(b)(2)(ix)). Otherwise, all bases or amino acids not appearing in paragraphs (b)(1) or (b)(2) of this section shall be listed in a given sequence as "N" or "Xaa," respectively, with further information, as appropriate, given elsewhere in the Sequence Listing.

(1) Base codes:

Symbol	Meaning
A	A; adenine
C	C; cytosine
G	G; guanine
T	T; thymine
U	U; uracil
M	A or C
R	A or G
W	A or T/U
S	C or G
Y	C or T/U
K	G or T/U
V	A or C or G; not T/U
H	A or C or T/U; not G
D	A or G or T/U; not C
B	C or G or T/U; not A
N	(A or C or G or T/U) or (unknown or other)

(2) Amino acid three-letter abbreviations:

Abbreviation	Amino acid name
Ala	Alanine
Arg	Arginine
Asn	Asparagine
Asp	Aspartic Acid
Asx	Aspartic Acid or Asparagine
Cys	Cysteine
Glu	Glutamic Acid
Gln	Glutamine
Glx	Glutamine or Glutamic Acid
Gly	Glycine
His	Histidine
Ile	Isoleucine
Leu	Leucine
Lys	Lysine
Met	Methionine

Abbreviation	Amino acid name
Phe	Phenylalanine
Pro	Proline
Ser	Serine
Thr	Threonine
Trp	Tryptophan
Tyr	Tyrosine
Val	Valine
Xaa	Unknown or other

(c) A nucleotide sequence shall be listed using the one-letter code for the nucleotide bases, as in paragraph (b)(1) of this section.

(d) The amino acids corresponding to the codons in the coding parts of a nucleotide sequence shall be typed immediately below the corresponding codons. Where a codon spans an intron, the amino acid symbol shall be typed below the portion of the codon containing two nucleotides.

(e) The amino acids in a protein or peptide sequence shall be listed using the three-letter abbreviation with the first letter as an upper case character, as in paragraph (b)(2) of this section.

(f) The bases in a nucleotide sequence (including introns) shall be listed in groups of 10 bases except in the coding parts of a sequence. Leftover bases, fewer than 10 in number, at the end of noncoding parts of a sequence shall be grouped together and separated from adjacent groups of 10 or 3 bases by a space.

(g) The bases in the coding parts of a nucleotide sequence shall be listed as triplets (codons).

(h) A protein or peptide sequence shall be listed with a maximum of 16 amino acids per line, with a space provided between each amino acid.

(i) A nucleotide sequence shall be listed with a maximum of 16 codons or 60 bases per line, with a space provided between each codon or group of 10 bases.

(j) A nucleotide sequence shall be presented, only by a single strand, in the 5′ to 3′ direction, from left to right.

(k) An amino acid sequence shall be presented in the amino to carboxy direction, from left to right, and the amino and carboxy groups shall not be presented in the sequence.

(l) The enumeration of nucleotide bases shall start at the first base of the sequence with number 1. The enumeration shall be continuous through the whole sequence in the direction 5′ to 3′. The enumeration shall be marked in the right margin, next to the line containing the one-letter codes for the bases, and giving the number of the last base of that line.

(m) The enumeration of amino acids may start at the first amino acid of the first mature protein, with number 1. The amino acids preceding the mature protein, e.g., pre-sequences, pro-sequences, pre-pro-sequences and signal sequences, when presented, shall have negative numbers, counting backwards starting with the amino acid next to number 1. Otherwise, the enumeration of amino acids shall start at the first amino acid at the amino terminal as number 1. It shall be marked below the sequence every 5 amino acids.

(n) For those nucleotide sequences that are circular in configuration, the enumeration method set forth in paragraph (l) of this section remains applicable with the exception that the designation of the first base of the nucleotide sequence may be made at the option of the applicant. The enumeration method for amino acid sequences that is set forth in paragraph (m) of this section remains applicable for amino acid sequences that are circular in configuration.

(o) A sequence with a gap or gaps shall be presented as a plurality of separate sequences, with separate sequence identifiers, with the number of separate sequences being equal in number to the number of continuous strings of sequence data. A sequence that is made up of one or more noncontiguous segments of a larger sequence or segments from different sequences shall be presented as a separate sequence.

(p) The code for representing modified nucleotide bases and modified and unusual amino acids shall conform to the code set forth in the tables in paragraphs (p)(1) and (p)(2) of this section. The modified base controlled vocabularly in paragraph (p)(1) of this section and the modified and unusual amino acids in paragraph (p)(2) of this section shall not be used in the nucleotide and/or amino acid sequences; but may be used in the description and/or the "Sequence Listing" corresponding to, but not including, the nucleotide and/or amino acid sequence.

(1) Modified base controlled vocabulary:

Abbreviation	Modified base description
ac4c	4-acetylcytidine.
chm5u	5-(carboxyhydroxylmethyl)uridine.
cm	2′-O-methylcytidine.
cmnm5s2u	5-carboxymethylaminomethyl-2-thioridine.
cmnm5u	5-carboxymethylaminomethyluridine.
d	dihydrouridine.
fm	2′-O-methylpseudouridine.
galq	beta,D-galactosylqueosine
gm	2′-O-methylguanosine.
i	inosine.
i6a	N6-isopentenyladenosine.
m1a	1-methyladenosine.
m1f	1-methylpseudouridine.
m1g	1-methylguanosine.
m1l	1-methylinosine.
m22g	2,2-dimethylguanosine.
m2a	2-methyladenosine.
m2g	2-methylguanosine.
m3c	3-methylcytidine.
m5c	5-methylcytidine.
m6a	N6-methyladenosine.
m7g	7-methylguanosine.
mam5u	5-methylaminomethyluridine.
mam5s2u	5-methoxyaminomethyl-2-thiouridine.
manq	beta,D-mannosylqueosine.
mcm5s2u	5-methoxycarbonylmethyluridine.
mo5u	5-methoxyuridine.
ms2i6a	2-methylthio-N6-isopentenyladenosine.
ms2t6a	N-((9-beta-D-ribofuranosyl-2-methylthiopurine-6-yl)carbamoyl)threonine.
mt6a	N-((9-beta-D-ribofuranosylpurine-6-yl)N-methyl-carbamoyl)threonine.
mv	uridine-5-oxyacetic acid methylester.
o5u	uridine-5-oxyacetic acid (v).
osyw	wybutoxosine.
p	pseudouridine.
q	queosine.
s2c	2-thiocytidine.
s2t	5-methyl-2-thiouridine.
s2u	2-thiouridine.
s4u	4-thiouridine.
t	5-methyluridine.
t6a	N-((9-beta-D-ribofuranosylpurine-6-yl)carbamoyl)threonine.
tm	2′-O-methyl-5-methyluridine.
um	2′-O-methyluridine.
yw	wybutosine.
x	3-(3-amino-3-carboxypropyl)uridine, (acp3)u.

(2) Modified and unusual amino acids:

Abbreviation	Modified and unusual amino acid
Aad	2-Aminoadipic acid.
bAad	3-Aminoadipic acid.
bAla	beta-Alanine,beta-Aminopropionic acid.
Abu	2-Aminobutyric acid.
4Abu	4-Aminobutyric acid, piperidinic acid.
Acp	6-Aminocaproic acid.
Ahe	2-Aminoheptanoic acid.
Aib	2-Aminoisobutyric acid.
bAib	3-Aminoisobutyric acid.
Apm	2-Aminopimelic acid.
Dbu	2,4-Diaminobutyric acid.
Des	Desmosine.
Dpm	2,2′-Diaminopimelic acid.
Dpr	2,3-Diaminopropionic acid.
EtGly	N-Ethylglycine.
EtAsn	N-Ethylasparagine.
Hyl	Hydroxylysine.
aHyl	allo-Hydroxylysine.
3Hyp	3-Hydroxyproline.
4Hyp	4-Hydroxyproline.
Ide	Isodesmosine.
alle	allo-Isoleucine.
MeGly	N-Methylglycine, sarcosine.
Melle	N-Methylisoleucine.
MeLys	N-Methylvaline.
Nva	Norvaline.

Abbreviation	Modified and unusual amino acid
Nle	Norleucine.
Orn	Ornithine.

§ 1.823 Requirements for nucleotide and/or amino acid sequences as part of the application papers.

(a) The "Sequence Listing," required by § 1.821(c), setting forth the nucleotide and/or amino acid sequences, and associated information in accordance with paragraph (b) of this section, must begin on a new page and be titled "Sequence Listing" and appear immediately prior to the claims. Each page of the "Sequence Listing" shall contain no more than 66 lines and each line shall contain no more than 72 characters. A fixed-width font shall be used exclusively throughout the "Sequence Listing."

(b) The "Sequence Listing" shall, except as otherwise indicated, include, in addition to and immediately preceding the actual nucleotide and/or amino acid sequence, the following items of information. The order and presentation of the items of information in the "Sequence Listing" shall conform to the arrangement given below, except that parenthetical explanatory information following the headings (identifiers) is to be omitted. Each item of information shall begin on a new line, enumerated with the number/numeral/letter in parentheses as shown below, with the heading (identifier) in upper case characters, followed by a colon, and then followed by the information provided. Except as allowed below, no item of information shall occupy more than one line. Those items of information that are applicable for all sequences shall only be set forth once in the "Sequence Listing." The submission of those items of information designated with an "M" is mandatory. The submission of those items of information designated with an "R" is recommended, but not required. The submission of those items of information designated with an "O" is optional. Those items designated with "rep" may have multiple responses and, as such, the item may be repeated in the "Sequence Listing."

(1) GENERAL INFORMATION (Application, diskette/tape and publication information):

(i) APPLICANT (maximum of first ten named applicants; specify one name per line: SURNAME comma OTHER NAMES and/or INITIALS—M/rep):

(ii) TITLE OF INVENTION (title of the invention, as elsewhere in application, four lines maximum—M):

(iii) NUMBER OF SEQUENCES (number of sequences in the "Sequence Listing"—M):

(iv) CORRESPONDENCE ADDRESS (M):

(A) ADDRESSEE (name of applicant, firm, company or institution, as may be appropriate):

(B) STREET (correspondence street address, as elsewhere in application, four lines maximum):

(C) CITY (correspondence city address, as elsewhere in application):

(D) STATE (correspondence state, as elsewhere in application):

(E) COUNTRY (correspondence country, as elsewhere in application):

(F) ZIP (correspondence zip or postal code, as elsewhere in application):

(v) COMPUTER READABLE FORM (M):

(A) MEDIUM TYPE (type of diskette/tape submitted):

(B) COMPUTER (type of computer used with diskette/tape submitted):

(C) OPERATING SYSTEM (type of operating system used):

(D) SOFTWARE (type of software used to create computer readable form):

(vi) CURRENT APPLICATION DATA (M, if available):

(A) APPLICATION NUMBER (U.S. application number, including a series code, a slash and a serial number, or U.S. PCT application number, including the letters PCT, a slash, a two letter code indicating the U.S. as the Receiving Office, a two digit indication of the year, a slash and a five digit number, if available):

(B) FILING DATE (U.S. or PCT application filing date, if available; specify as dd-MMM-yyyy):

(C) CLASSIFICATION (IPC/US classification or F-term designation, where F-terms have been developed, if assigned, specify each designation, left justified, within an eighteen position alpha numeric field—rep, to a maximum of ten classification designations):

(vii) PRIOR APPLICATION DATA (prior domestic, foreign priority or international application data, if applicable—M/rep):

(A) APPLICATION NUMBER (application number; specify as two letter country code and an eight digit application number; or if a PCT application, specify as the letters PCT, a slash, a two letter code indicating the Receiving Office, a two digit indication of the year, a slash and a five digit number):

(B) FILING DATE (document filing date, specify as dd-MMM-yyyy):

(viii) ATTORNEY/AGENT INFORMATION (O):

(A) NAME (attorney/agent name; SURNAME comma OTHER NAMES and/or INITIALS):

(B) REGISTRATION NUMBER (attorney/agent registration number):

(C) REFERENCE/DOCKET NUMBER (attorney/agent reference or docket number):

(ix) TELECOMMUNICATION INFORMATION (O):

(A) TELEPHONE (telephone number of applicant or attorney/agent):

(B) TELEFAX (telefax number of applicant or attorney/agent):

(C) TELEX (telex number of applicant or attorney/agent):

(2) INFORMATION FOR SEQ ID NO: X(rep):

(i) SEQUENCE CHARACTERISTICS (M):

(A) LENGTH (sequence length, expressed as number of base pairs or amino acid residues):

(B) TYPE (sequence type, i.e., whether nucleic acid or amino acid):

(C) STRANDEDNESS (if nucleic acid, number of strands of source organism molecule, i.e., whether single stranded, double stranded, both or unknown to applicant):

(D) TOPOLOGY (whether source organism molecule is circular, linear, both or unknown to applicant)

(ii) MOLECULE TYPE (type of molecule sequenced in SEQ ID NO:X (at least one of the following should be included with subheadings, if any, in Sequence Listing—R)):

—Genomic RNA;
—Genomic DNA;
—mRNA
—tRNA;
—rRNA;
—snRNA;
—scRNA;
—preRNA;
—cDNA to genomic RNA;
—cDNA to mRNA;
—cDNA to tRNA;
—cDNA to rRNA;
—cDNA to snRNA;
—cDNA to scRNA;
—Other nucleic acid;

(A) DESCRIPTION (four lines maximum):

—protein and
—peptide.

(iii) HYPOTHETICAL (yes/no—R):

(iv) ANTI-SENSE (yes/no—R):

(v) FRAGMENT TYPE (for proteins and peptides only, at least one of the following should be included in the Sequence Listing—R):

—N-terminal fragment;
—C-terminal fragment and
—internal fragment.

(vi) ORIGINAL SOURCE (original source of molecule sequenced in SEQ ID NO:X–R):
(A) ORGANISM (scientific name of source organism):
(B) STRAIN:
(C) INDIVIDUAL ISOLATE (name/number of individual/isolate):
(D) DEVELOPMENTAL STAGE (give developmental stage of source organism and indicate whether derived from germ-line or rearranged developmental pattern):
(E) HAPLOTYPE:
(F) TISSUE TYPE:
(G) CELL TYPE:
(H) CELL LINE:
(I) ORGANELLE:
(vii) IMMEDIATE SOURCE (immediate experimental source of the sequence in SEQ ID NO:X–R):
(A) LIBRARY (library-type, name):
(B) CLONE (clone(s)):
(viii) POSITION IN GENOME (position of sequence in SEQ ID NO:X in genome–R):
(A) CHROMOSOME/SEGMENT (chromosome/segment—name/number):
(B) MAP POSITION:
(C) UNITS (units for map position, i.e., whether units are genome percent, nucleotide number or other/specify):
(ix) FEATURE (description of points of biological significance in the sequence in SEQ ID NO:X–R/rep):
(A) NAME/KEY (provide appropriate identifier for feature—four lines maximum):
(B) LOCATION (specify location according to syntax of DDBJ/EMBL/GenBank Feature Tables Definition, including whether feature is on complement of presented sequence; where appropriate state number of first and last bases/amino acids in feature-four lines maximum):
(C) IDENTIFICATION METHOD (method by which the feature was identified, i.e., by experiment, by similarity with known sequence or to an established consensus sequence, or by similarity to some other pattern—four lines maximum):
(D) OTHER INFORMATION (include information on phenotype conferred, biological activity of sequence or its product, macromolecules which bind to sequence or its product, or other relevant information—four lines maximum):
(x) PUBLICATION INFORMATION (Repeat section for each relevant publication—O/rep):
(A) AUTHORS (maximum of first ten named authors of publication; specify one name per line: SURNAME comma OTHER NAMES and/or INITIALS—rep):
(B) TITLE (title of publication):
(C) JOURNAL (journal name in which data published):
(D) VOLUME (journal volume in which data published):
(E) ISSUE (journal issue number in which data published):
(F) PAGES (journal page numbers in which data published):
(G) DATE (journal date in which data published; specify as dd-MMM-yyyy, MMM-yyyy or Season-yyyy):
(H) DOCUMENT NUMBER (document number, for patent type citations only; specify as two letter country code, eight digit document number (right justified), one letter and, as appropriate, one number or a space as a document type code; of if a PCT application, specify as the letters PCT, a slash, a two letter code indicating the Receiving Office, a two digit indication of the year, a slash and a five digit number; or if a PCT publication, specify as the two letters WO, a two digit indication of the year, a slash and a five digit publication number):
(I) FILING DATE (document filing date, for patent-type citations only; specify as dd-MMM-yyyy):
(J) PUBLICATION DATE (document publication date; for patent-type citations only, specify as dd-MMM-yyyy):
(K) RELEVANT RESIDUES In SEQ ID NO:X (rep): FROM (position) TO (position)
(xi) SEQUENCE DESCRIPTION: SEQ ID NO:X:

§ 1.824 Form and format for nucleotide and/or amino acid sequence submissions in computer readable form.

(a) The computer readable form required by § 1.821(e) shall contain a printable copy of the "Sequence Listing," as defined in §§ 1.821(c), 1.822 and 1.823, recorded as a single file on either a diskette or a magnetic tape. The computer readable form shall be encoded and formatted such that a printed copy of the "Sequence Listing" may be recreated using the print commands of the computer/operating-system configuration specified in paragraph (f) of this section.

(b) The file in paragraph (a) of this section shall be encoded in a subset of the American Standard Code for Information Interchange (ASCII). This subset shall consist of all the printable ASCII characters including the ASCII space character plus line-termination, pagination and end-of-file characters associated with the computer/operating-system configurations specified in paragraph (f) of this section. No other characters shall be allowed.

(c) The computer readable form may be created by any means, such as word processors, nucleotide/amino acid sequence editors or other custom computer programs; however, it shall be readable by one of the computer/operating-system configurations specified in paragraph (f) of this section, and shall conform to the specifications in paragraphs (a) and (b) of this section.

(d) The entire printable copy of the "Sequence Listing" shall be contained within one file on a single diskette or magnetic tape unless it is shown to the satisfaction of the Commissioner that it is not practical or possible to submit the entire printable copy of the "Sequence Listing" within one file on a single diskette or magnetic tape.

(e) The submitted diskette or tape shall be write-protected such as by covering or uncovering diskette holes, removing diskette write tabs or removing tape write rings.

(f) As set forth in paragraph (c), above, any means may be used to create the computer readable form, as long as the following conditions are satisfied. A submitted diskette shall be readable on one of the computer/operating-system configurations described in paragraphs (1) through (3), below. A submitted tape shall satisfy the format specifications described in paragraph (4), below.

(1) Computer: IBM PC/XT/AT, IBM PS/2 or compatibles;
(i) Operating system: PC–DOS or MS–DOS (Versions 2.1 or above);
(ii) Line Terminator: ASCII Carriage Return plus ASCII Line Feed;
(iii) Pagination: ASCII Form Feed or Series of Line Terminators;
(iv) End-of-File: ASCII SUB (Ctrl-Z);
(v) Media: (A) Diskette—5.25 inch, 360 Kb storage;
(B) Diskette—5.25 inch, 1.2 Mb storage;
(C) Diskette—3.50 inch, 720 Kb storage;
(D) Diskette—3.5 inch, 1.44 Mb storage;
(vi) Print Command: PRINT filename.extension;
(2) Computer: IBM PC/XT/AT, IBM PS/2 or compatibles;
(i) Operating system: Xenix;
(ii) Line Terminator: ASCII Carriage Return;
(iii) Pagination: ASCII Form Feed or Series of Line Terminators;
(iv) End-of-File: None;
(v) Media: (A) Diskette—5.25 inch, 360 Kb storage;
(B) Diskette—5.25 inch, 1.2 Mb storage;
(C) Diskette—3.50 inch, 720 Kb storage;
(D) Diskette—3.5 inch, 1.44 Mb storage;
(vi) Print Command: Ipr filename;

(3) Computer: Apple Macintosh;
(i) Operating System: Macintosh;
(ii) Macintosh File Type: text with line termination
(iii) Line Terminator: Pre-defined by text type file;
(iv) Pagination: Pre-defined by text type file;
(v) End-of-file: Pre-defined by text type file;
(vi) Media: (A) Diskett—3.50 inch, 400 Kb storage;
(B) Diskette—3.50 inch, 800 Kb storage;
(C) Diskette—3.50 inch, 1.4 Mb storage;
(vii) Print Command: Use PRINT command from any Macintosh Application that processes text files, such as MacWrite or Teach Text;
(4) Magnetic tape: 0.5 inch, up to 2400 feet;
(i) Density: 1600 or 6250 bits per inch, 9 track;
(ii) Format: raw, unblocked;
(iii) Line Terminator: ASCII Carriage Return plus optional ASCII Line Feed;
(iv) Pagination: ASCII Form Feed or Series of Line Terminators;
(v) Print Command (Unix shell version given here as sample response—mt/dev/rmt0; lpr/dev/rmt0):
(g) Computer readable forms that are submitted to the Office will not be returned to the applicant.
(h) All computer readable forms shall have a label permanently affixed thereto on which has been hand printed or typed, a description of the format of the computer readable form as well as the name of the applicant, the title of the invention, the date on which the data were recorded on the computer readable form and the name and type of computer and operating system which generated the files on the computer readable form. If all of this information cannot be printed on a label affixed to the computer readable form, by reason of size or otherwise, the label shall include the name of the applicant and the title of the invention and a reference number, and the additional information may be provided on a container for the computer readable form with the name of the applicant, the title of the invention, the reference number and the additional information affixed to the container. If the computer readable form is submitted after the date of filing under 35 U.S.C. 111, after the date of entry in the national stage under 35 U.S.C. 371 or after the time of filing, in the United States Receiving Office, an international application under the PCT, the labels mentioned herein must also include the date of the application and the application number, including series code and serial number.

§ 1.825 Amendments to or replacement of sequence listing and computer readable copy thereof.

(a) Any amendment to the paper copy of the "Sequence Listing" (§ 1.821(c)) must be made by the submission of substitute sheets. Amendments must be accompanied by a statement that indicates support for the amendment in the application, as filed, and a statement that the substitute sheets include no new matter. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(b) Any amendment to the paper copy of the "Sequence Listing," in accordance with paragraph (a) of this section, must be accompanied by a substitute copy of the computer readable form (§ 1.821(e)) including all previously submitted data with the amendment incorporated therein, accompanied by a statement that the copy in computer readable form is the same as the substitute copy of the "Sequence Listing." Such a statement must be a verified statement if made by a person not registered to practice before the Office.

(c) Any appropriate amendments to the "Sequence Listing" in a patent, e.g., by reason of reissue or certificate of correction, must comply with the requirements of paragraphs (a) and (b) of this section.

(d) If, upon receipt, the computer readable form is found to be damaged or unreadable, applicant must provide, within such time as set by the Commissioner, a substitute copy of the data in computer readable form accompanied by a statement that the substitute data is identical to that originally filed. Such a statement must be a verified statement if made by a person not registered to practice before the Office.

Appendix A—Sample Sequence Listing

(1) GENERAL INFORMATION:
(i) APPLICANT: Doe, Joan X, Doe, John Q
(ii) TITLE OF INVENTION: Isolation and Characterization of a Gene Encoding a Protease from *Paramecium* sp.
(iii) NUMBER OF SEQUENCES: 2
(iv) CORRESPONDENCE ADDRESS:
(A) ADDRESSEE: Smith and Jones
(B) STREET: 123 Main Street
(C) CITY: Smalltown
(D) STATE: Anystate
(E) COUNTRY: USA
(F) ZIP: 12345
(v) COMPUTER READABLE FORM:
(A) MEDIUM TYPE: Diskette, 3.50 inch, 800 Kb storage
(B) COMPUTER: Apple Macintosh
(C) OPERATING SYSTEM: Mcintosh 5.0
(D) SOFTWARE: MacWrite
(vi) CURRENT APPLICATION DATA:
(A) APPLICATION NUMBER: 09/999,999
(B) FILING DATE: 28-FEB-1989
(C) CLASSIFICATION: 999/99
(vii) PRIOR APPLICATION DATA:
(A) APPLICATION NUMBER: PCT/US88/99999
(B) FILING DATE: 01-MAR-1988
(viii) ATTORNEY/AGENT INFORMATION:
(A) NAME: Smith, John A.
(B) REGISTRATION NUMBER: 00001
(C) REFERENCE/DOCKET NUMBER: 01-0001
(ix) TELECOMMUNICATION INFORMATION:
(A) TELEPHONE: (909) 999–0001
(B) TELEFAX: (909) 999–0002
(2) INFORMATION FOR SEQ ID NO: 1:
(i) SEQUENCE CHARACTERISTICS:
(A) LENGTH: 954 base pairs
(B) TYPE: nucleic acid
(C) STRANDEDNESS: single
(D) TOPOLOGY: linear
(ii) MOLECULE TYPE: genomic DNA
(iii) HYPOTHETICAL: yes
(iv) ANTI-SENSE: no
(vi) ORIGINAL SOURCE:
(A) ORGANISM: Paramecium sp
(C) INDIVIDUAL/ISOLATE: XYZ2
(G) CELL TYPE: unicellular organism
(vii) IMMEDIATE SOURCE:
(A) LIBRARY: genomic
(B) CLONE: Para–XYZ2/36
(x) PUBLICATION INFORMATION:
(A) AUTHORS: Doe, Joan X, Doe, John Q
(B) TITLE: Isolation and Characterization of a Gene Encoding a Protease from *Paramecium* sp.
(C) JOURNAL: Fictional Genes
(D) VOLUME: I
(E) ISSUE: 1
(F) PAGES: 1–20
(G) DATE: 02-MAR-1988
(K) RELEVANT RESIDUES IN SEQ ID NO: 1: FROM 1 TO 954

BILLING CODE 3510-16-M

(xi) SEQUENCE DESCRIPTION: SEQ ID NO:1:

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AGGAACCCAA GCATCCACCC CTCTCCCCCA ACTTCCCCCA CGCTAAAAAA AACAGAGGGA  618

GCCCACTCCT ATGCCTCCCC CTGCCATCCC CCAGGAACTC AGTTGTTCAG TGCCCACTTC  678

TAC CCC AGC AAG CAG AAC TCA CTG CTC TGG AGA GCA AAC ACG GAC CGT    726
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GCC TTC CTC CAG GAT GGT TTC TCC TTG AGC AAC AAT TCT CTC CTG GTC    774
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BILLING CODE 3510-16-C

(2) INFORMATION FOR SEQ ID NO: 2:
(i) SEQUENCE CHARACTERISTICS:
(A) LENGTH: 82 amino acids
(B) TYPE: amino acid
(D) TOPOLOGY: linear
(ii) MOLECULE TYPE: protein
(ix) FEATURE:
(A) NAME/KEY: signal sequence
(B) LOCATION: –34 to –1
(C) IDENTIFICATION METHOD: similarity to other signal sequences, hydrophobic
(D) OTHER INFORMATION: expresses protease
(x) PUBLICATION INFORMATION:
(A) AUTHORS: Doe, Joan X, Doe, John Q
(B) TITLE: Isolation and Characterization of a Gene Encoding a Protease from *Paramecium* sp.
(C) JOURNAL: Fictional Genes
(D) VOLUME: I
(E) ISSUE: 1
(F) PAGES: 1–20
(G) DATE: 02-MAR-1988
(K) RELEVANT RESIDUES IN SEQ ID NO: 2: FROM –34 TO 48

BILLING CODE 3510-16-M

(xi) SEQUENCE DESCRIPTION: SEQ ID NO:2:

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His Gly Leu Met His Leu Ala His Ser Asn Leu Lys Pro Ala Ala His
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Asp Arg Ala Phe Leu Gln Asp Gly Phe Ser Leu Ser Asn Asn Ser Leu
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Leu Val
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BILLING CODE 3510-16-C

Appendix B—Headings for Information Items in § 1.823

(1) GENERAL INFORMATION:
(i) APPLICANT:
(ii) TITLE OF INVENTION:
(iii) NUMBER OF SEQUENCES:
(iv) CORRESPONDENCE ADDRESS:
(A) ADDRESSEE:
(B) STREET:
(C) CITY:
(D) STATE:
(E) COUNTRY:
(F) ZIP:
(v) COMPUTER READABLE FORM:
(A) MEDIUM TYPE:
(B) COMPUTER:
(C) OPERATING SYSTEM:
(D) SOFTWARE:
(vi) CURRENT APPLICATION DATA:
(A) APPLICATION NUMBER:
(B) FILING DATE:
(C) CLASSIFICATION:
(vii) PRIOR APPLICATION DATA:
(A) APPLICATION NUMBER:
(B) FILING DATE:
(viii) ATTORNEY/AGENT INFORMATION:
(A) NAME:
(B) REGISTRATION NUMBER:
(C) REFERENCE/DOCKET NUMBER:
(ix) TELECOMMUNICATION INFORMATION:
(A) TELEPHONE:
(B) TELEFAX:
(C) TELEX:

(2) INFORMATION FOR SEQ ID NO: X:
(i) SEQUENCE CHARACTERISTICS:
(A) LENGTH:
(B) TYPE:
(C) STRANDEDNESS:
(D) TOPOLOGY:
(ii) MOLECULE TYPE:
—Genomic RNA;
—Genomic DNA;
—mRNA
—tRNA;
—rRNA;
—snRNA;
—scRNA;
—preRNA;
—cDNA to genomic RNA;
—cDNA to mRNA;
—cDNA to tRNA;
—cDNA to rRNA;
—cDNA to snRNA;
—cDNA to scRNA;
—Other nucleic acid;
(A) DESCRIPTION:
—protein and
—peptide.
(iii) HYPOTHETICAL:
(iv) ANTI-SENSE:
(v) FRAGMENT TYPE:
(vi) ORIGINAL SOURCE:
(A) ORGANISM:
(B) STRAIN:
(C) INDIVIDUAL ISOLATE:
(D) DEVELOPMENTAL STAGE:
(E) HAPLOTYPE:
(F) TISSUE TYPE:
(G) CELL TYPE:
(H) CELL LINE:
(I) ORGANELLE:
(vii) IMMEDIATE SOURCE:
(A) LIBRARY:
(B) CLONE:
(viii) POSITION IN GENOME:
(A) CHROMOSOME/SEGMENT:
(B) MAP POSITION:
(C) UNITS:
(ix) FEATURE:
(A) NAME/KEY:
(B) LOCATION:
(C) IDENTIFICATION METHOD:
(D) OTHER INFORMATION:
(x) PUBLICATION INFORMATION:
(A) AUTHORS:
(B) TITLE:
(C) JOURNAL:
(D) VOLUME:
(E) ISSUE:
(F) PAGES:
(G) DATE:
(H) DOCUMENT NUMBER:
(I) FILING DATE:
(J) PUBLICATION DATE:
(K) RELEVANT RESIDUES:
(xi) SEQUENCE DESCRIPTION: SEQ ID NO:X:

Dated: April 20, 1990.

Harry F. Manbeck, Jr.,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 90-9849 Filed 4-30-90; 8:45 am]

BILLING CODE 3510-16-M

federal register

Tuesday
May 1, 1990

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone;
Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-3727-5]

RIN 2060-AC80

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The United States, as Party to the Montreal Protocol on Substances that Deplete the Ozone Layer, has committed to control or reduce the use of specified ozone depleting chemicals. To reduce the cost of achieving the Montreal Protocol Commitments, the Agency wants to promote cost-effective technologies that will ensure an orderly transition to substitute chemicals and alternative technologies. This ANPRM invites comments on issues that EPA would need to address in the development of a national recycling program that would encourage or require recycling of ozone depleting compounds. This ANPRM also responds to an industry petition from the Alliance for a Responsible CFC Policy to develop such a recycling program. During this process, EPA intends to work in close conjunction with industry, government and public interest groups. This ANPRM presents issues, questions, and ideas associated with recycling and requests comments from interested parties on all aspects of a recycling program.

DATES: Written comments on this ANPRM must be submitted by July 2, 1990, at the location listed below.

ADDRESSES: Written comments should be sent to Docket A-90-2, Central Docket, South Conference Room 4, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3:30 p.m. on weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of the written comments be sent to David F. Lee at the address listed below.

FOR FURTHER INFORMATION CONTACT: David F. Lee (202-475-7497) and Jean Lupinacci (202-475-8468), Division of Global Change, Office of Atmospheric and Indoor Air Programs, Office of Air and Radiation (ANR-445), EPA, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The Montreal Protocol on Substances that Deplete the Ozone Layer calls for a 50 percent reduction of fully halogenated CFC production and consumption by 1998 and for a freeze on halon production and consumption in 1992. The Protocol has been ratified by over 52 countries and entered into force on January 1, 1989. The process of "assessment and review," contained in Article 6, has been initiated to determine whether additional control measures are warranted in light of new scientific information concerning the risks of ozone depletion.

The President has called for a complete phase out of CFCs by the year 2000. Re-negotiations of the Montreal Protocol are scheduled for completion in June, 1990.

To aid compliance with current and future CFC reduction commitments, EPA wants to promote cost-effective approaches that will facilitate an orderly transition to substitute chemicals and alternative technologies. This ANPRM solicits comments on how a national recycling program could be part of this effort, and if so, how the program should be structured.

I. Goal and Scope

During its investigation into a national recycling program the Agency intends to focus on those end uses in which significant recycling and reclamation is already technically and economically feasible. The Agency will evaluate the means of establishing technologically and environmentally sound requirements governing the recovery, recycling, reclamation, and reuse of CFCs and halons, and will examine possible regulatory and non-regulatory programs that promote or ensure efficient recovery and recycling.

The Agency will also evaluate the economic, institutional and regulatory issues of uniform, nationwide conservation and recycling standards. In this process, the Agency plans to evaluate public awareness, and training and certification programs that could promote the effectiveness of a national program. The Agency requests comments on the scope of this project and whether it should be more limited or broader than described.

II. Approach

During its investigation into a national recycling program, the Agency will examine the following concerns:

- The extent to which recycling and reclamation provides environmental benefits (See section V.A.);
- The extent to which recycling and reclamation provides economic benefits (See section V.B.);
- The extent to which market inefficiencies impede the market place from developing an effective recycling program (See section V.B. and C.);
- The appropriate regulatory scheme should Federal action be necessary.

This ANPRM discusses a market-oriented program (a deposit/refund program) that provides a financial incentive for users to recycle, a mandatory recycling program requiring specific sectors to recycle (direct regulations), and possible voluntary programs assisted by government where appropriate (*See* section VI.).

Direct Regulations

The Agency has begun the review of possible direct regulations, as one possible regulatory scheme for a national recycling program. This subsection outlines a possible approach to the development of these regulations.

If the Agency were to adopt regulations requiring recycling through direct regulations, EPA would promulgate regulations on a sector by sector basis. The Agency believes that such an approach is warranted given the varying states of development or commercialization of the technology to recycle in each sector. The Agency would promulgate recycling regulations for sectors in order of priority based on the following criteria:

- The availability of technology to capture and recycle controlled substances;
- The time and difficulty of developing a standard of purity in those sectors where it is applicable;
- The volume of controlled substances to be recaptured within the sector;
- The extent of an off-site recycling network to support recapture;
- The cost of recycling within each sector; and
- The ability of the Agency to develop an effective compliance monitoring program.

If it were to promulgate direct regulations based on these criteria, the Agency's first priority would be to develop regulations targeted towards the mobile air conditioning and stationary refrigeration and air conditioning industry, because of the large amount of emissions recoverable, the rapid advancement of recycling technology in the mobile air conditioning industry, and the petition received from the Alliance requesting uniform federal regulations for CFC conservation and recycling standards. These regulations would build on the efforts already underway by the private sector and state and local regulatory agencies.

Figures 1 and 2 list the various end use areas in which CFCs are used in the U.S. As shown in Figure 1, EPA believes that approximately 63 percent of total CFC use in the U.S. occurs in applications where recycling is possible. Emissions during servicing or disposal could be reduced in these sectors through recycling and reclamation activities. The remaining 37 percent (Figure 2) of U.S. use is in areas in which recycling is either technically impractical or very costly.

FIGURE 1.—PERCENT CFC USE IN 1986 FOR END-USES WHERE RECYCLING IS POSSIBLE

Mobile Air-Conditioning	21.3
Chillers	4.5
Commercial Refrigeration	16.9
Solvent Cleaning	14.2
Sterilization	5.1
Household Refrigeration	1.2
	63.2

FIGURE 2.—PERCENT CFC USE IN 1986 FOR END-USES WHERE RECYCLING IS INFEASIBLE

Aerosols	3.9
Foam Insulation	20.3
Foam Packaging	6.4
Flexible Foam (Slabstock)	4.9
Flexible Foam (Molded)	1.3
	36.8

SOURCE: "Costs and Benefits of Phasing Out Production of CFCs and Halons in the United States", EPA Review Draft, 1989. (*See* section VII.G for discussion of recycling for the foam sectors.)

If the Agency were to adopt direct regulations, the Agency would develop a recycling program targeted at those sectors from Figure 1 where recycling is cost-effective and feasible. The Agency requests comments on this approach.

If the Agency were to adopt a regulatory approach to recycling, the Agency may need to stage or phase in regulations to address recovery at servicing and recovery at disposal, targeting the largest source of CFC and halon emissions immediately. EPA estimates that equipment servicing in most sectors presents the largest available source of CFCs for recycling; it could account for 80 percent of the recycled CFCs from the mobil air-conditioning and stationary air conditioning and refrigeration sectors in 1993. The Agency will consider the capture of emissions during servicing a priority over emission capture upon product disposal, which currently offers less opportunity for recovery and would likely entail higher costs. The Agency requests comments on this staged approach.

The Agency will also investigate voluntary programs for these sectors. In these cases, voluntary programs to disseminate public information, resolve institutional barriers and address research needs for voluntary standards may be more appropriate. The Agency requests comments on the appropriate content and role of voluntary recycling programs.

In addition, the Agency may, at some future date, consider expanding the coverage of the national recycling program to include other chemicals which are potential ozone-depletors. The recycling of these chemicals offers a potentially attractive means of reducing their potential impacts on ozone depletion and climate change, and could build on the recycling regulations or voluntary programs created for CFCs. EPA requests comments on expanding a national recycling program to include these chemicals and whether it is appropriate to address those chemicals that are not directly limited by the Montreal Protocol.

III. Industry Petition for a Recycling Program

The Agency has received a petition from the Alliance For Responsible CFC Policy, requesting promulgation of regulations that address the recycling of fully halogenated CFCs used as refrigerants. The Alliance is a trade organization that represents companies involved in the manufacture, importation, distribution and sale of CFCs, and whose stated purpose is to pursue soundly based policies and regulations respecting potential depletion of the stratospheric ozone layer. This trade organization has been closely involved in the issue of ozone depletion since 1980, and serves as one of the major organizations representing industries most affected by regulatory restrictions placed on CFCs.

Through this petition to the EPA Administrator, the Alliance urged the Agency to develop and implement uniform federal standards that address recycling of CFCs contained in and released from air-conditioning and refrigeration systems. The Alliance stated that such a program was warranted by the need to protect the ozone layer and to minimize the "adverse societal impacts" of the transition to alternative chemicals and products. The Alliance further implied concern that recent state actions requiring recycling could create differing state standards, leading to an inefficient system to capture, reclaim and reuse ozone depleting chemicals. For these reasons, the Alliance requested the Agency to promulgate national regulations on recycling that would aid in protecting the ozone layer and facilitate the transition away from CFCs.

In response to this petition, the Agency today announces its intention to investigate the need for a national recycling program. EPA believes that such action may be warranted given the possible environmental benefits of recapturing CFCs for reuse, the ability to minimize transition costs to ozone friendly technology, the Alliance's request for such a program, and the possibility that differing state standards may prove inefficient to the development of recycling on a national level. In this area, the Agency looks forward to working with states and local officials and other members of the public, Alliance members, other industry representatives, and environmental groups.

The Agency's past experience has shown that joint industry and environmental group projects provide a way to find creative solutions to ozone depletion issues. The Agency has benefitted greatly from industry's and environmentalists' input. Recently, EPA participated with the automobile service industry, automobile and recycling equipment manufacturers and environmental groups in a cooperative project that set a voluntary standard of purity for recycled refrigerant in mobile air-conditioners. The Halon Alternatives Research Consortium, which is composed of government agencies and private firms including the halon producers, users, distributors and insurers, is coordinating research and review of chemical replacements for the regulated halons. The Association of Household Appliance Manufacturers is also actively participating with government in an investigation into alternative refrigeration mixtures, alternative foam structures, and refrigeration cycles that could significantly enhance energy efficiency of domestic refrigerators. EPA relies on the experience and knowledge that industry and environmental groups bring to finding innovative solutions to reducing the use of controlled substances. A recycling program, whether it is regulatory or voluntary, could benefit from similar efforts.

The remainder of this ANPRM presents background information on the stratospheric ozone protection program and concerns that have led EPA to examine the need for a national recycling program. Further details on the

approaches EPA could follow in formulating a recycling program are presented. Finally, technical and program issues for recycling in specific end use areas are presented.

IV. Development of EPA's Stratospheric Ozone Protection Program

Stratospheric ozone shields the earth's surface from dangerous ultra-violet (UV–B) radiation. In 1974 Rowland and Molina hypothesized that chlorofluorocarbons (CFCs) could rapidly destroy stratospheric ozone, increasing the incidence of ultra-violet light on the earth's surface. Increased UV–B is associated with the increase in skin cancers and cataracts, and linked to crop, fish, and materials damage. In 1978, the United States banned the use of CFCs in non-essential aerosols because of concern for ozone depletion.

In 1982, global production of these chemicals began to increase, reversing the decrease in global production that resulted from the aerosol ban in the U.S. and other nations. In response, the United Nations Environment Programme (UNEP) began efforts to address global ozone depletion. These efforts culminated in the Vienna Convention to Protect the Ozone Layer in 1985 which provided the context for the eventual adoption of the Montreal Protocol on Substances that Deplete the Ozone Layer, the treaty to limit the production and consumption of CFCs and halons.

EPA promulgated a rule to limit the production and consumption of CFCs and halons in order to implement the terms of the Montreal Protocol and reduce the risks of stratospheric ozone depletion (53 FR 30566, August 12, 1988). Reflecting the terms of the Protocol, the rule requires a near-term freeze at 1986 levels of production and consumption (defined as production plus imports minus exports) of CFC–11, –12, –113, –114, and –115 based on their relative ozone depletion weights, followed by a phased reduction to 80 percent and 50 percent of 1986 levels beginning in mid-1993 and mid-1998, respectively. It also limits the production and consumption of Halon 1211, 1301, and 2402 to 1986 levels beginning in 1992. The rule implements the Protocol's requirements to control production and consumption of the CFCs and halons specified above by allocating production and consumption allowances to firms that produced and imported these chemicals in 1986, based on their 1986 levels of these activities. This rule was promulgated under section 157(b) of the Clean Air Act.

During the development of EPA's regulatory program to limit the production and consumption of these controlled substances, an international group of over 100 atmospheric scientists (the Ozone Trends Panel) reviewed the scientific data measuring ozone depletion and concluded that global ozone in northern hemisphere mid-latitudes had decreased by 1.7 to 3 percent over a seventeen year period (1969 to 1986) with the largest lows in winter. This decrease was two to three times greater than had been predicted by atmospheric models. Furthermore, several extensive scientific campaigns produced evidence that implicated CFCs in springtime ozone depletion over the Antarctic pole—the so called Antarctic Ozone hole. (Scientific Assessment of Stratospheric Ozone: 1989 United Nations Environmental Programme: 1989)

In 1988, EPA published a study of future chlorine and bromine levels in the atmosphere ("Future Concentrations of Stratospheric Chlorine and Bromine", EPA, August 1988). Due to the uncertainties inherent in atmospheric models, the scientific community has begun to view total chlorine loadings as the appropriate measure of potential environmental risk rather than estimates obtained by atmospheric modelling of projected ozone depletion. Since scientists have found chlorine and bromine levels in the stratosphere largely responsible for ozone depletion, total loadings of these chemicals to the stratosphere would indicate the likelihood of ozone depletion. EPA's 1988 analysis found that levels of chlorine and bromine would continue to increase significantly despite the reductions in CFCs and Halons required by the Montreal Protocol. With the continued use of CFCs and halons under the restrictions of the Montreal Protocol, the concentration of chlorine is expected to increase from 3.0 ppb to 10 ppb by 2085. In the mid-1970's, when the Antarctic ozone hole first began, the atmospheric concentration of chlorine equaled approximately 2.0 ppb.

As a result of this analysis and the scientific evidence of polar and global ozone depletion, the international community has begun additional discussions leading toward strengthening the Montreal Protocol. In April 1989, 70 nations met in Helsinki at the first Meeting of the Parties to the Montreal Protocol and adopted a non-binding resolution that called for a complete phase-out of the production and consumption of the controlled CFCs as soon as possible but no later than the year 2000, as well as the elimination of halons and limits on other ozone-depleting chemicals.

Preparations for the re-negotiation of the Protocol have begun. Scientific, economic and technological assessments required by the Montreal Protocol to evaluate the need for changes have been completed. Protoco Parties are scheduled to meet in June, 1990 in Great Britain to renegotiate the conditions and terms of the Montreal Protocol.

V. Need for Recycling

To date, the Agency has focused direct regulatory controls on the limited number of producers and importers of ozone-depleting substances. EPA has required producers and importers to freeze and then reduce the supply of these chemicals to the user communities, consistent with the reductions required in the Montreal Protocol. The market, in turn, re-allocates the production and importation of these chemicals to the users by price, ensuring the most economically efficient distribution of the chemicals. High value users would continue to purchase controlled substances at higher prices while other users will switch to less expensive substitutes or alternative products. The Agency intends to continue to use this approach to implement any changes to the Montreal Protocol.

For a number of reasons EPA is now investigating the need to supplement this approach with a national recycling program that would encourage or ensure reclamation, recovery and recycling of controlled substances where technically and economically feasible to reduce unnecessary emissions of CFCs and halons as the compounds are phased out. As discussed below, analysis from a recent Agency report indicates that immediate reductions in chlorine loadings to the stratosphere can be achieved through reclamation and recycling of controlled substances (These chemicals may be eventually released posing some hazard to the ozone; the Agency is investigating the effect of a delayed release). The Agency is also investigating whether regulatory action is necessary to address any market inefficiencies that may hinder the developmont of recycling, and to prevent significant cost increases in various user sectors that would result if recycled CFCs and halons were unavailable during the course of the phase-out and immediately thereafter. In addition, recent action at the state and local level requiring recycling of CFCs and halons now must be considered in evaluating the need for a national program. Each of these points is discussed below.

A. Environmental Protection Objectives

Recent scientific evidence indicates that risks of ozone depletion are greater than previously thought. EPA analysis ("Analysis of the Environmental Implications of the Future Growth on Demand for Partially Halogenated Chlorinated Compounds," EPA, July 1989) shows that chlorine levels will continue to increase from current levels of 3.0 to about 4.0 ppb despite a phase-out in production of controlled substances by the year 2000. Earlier reductions in CFCs before 2000 would reduce the environmental risks even as chlorine levels continue to increase over the next decade. Recycling provides an opportunity to limit this increase in chlorine levels. Indeed, estimates based on preliminary EPA analysis of a proposed recycling program, indicates that one-third of all CFCs could be recycled by the turn of the century. Recycling may reduce the rate of chlorine loadings to the stratosphere.

The Agency is currently investigating the impact that recycled CFCs may have on the ozone layer. Since these chemicals are difficult to destroy, it is likely that they will be eventually released, although at a later point in time. The Agency is assessing the possibility that such chemicals could either be destroyed or transformed into other chemicals at a later date, thus diminishing their eventual impact on the ozone layer. In addition, EPA is investigating the impact of their eventual release on "peak chlorine concentrations." Recent scientific evidence suggests that the peak chlorine concentration directly affects the risk of ozone depletion. It is likely that delayed or reduced release of CFCs due to recycling over the next 30 to 40 years will lower the peak of chlorine concentration. The Agency requests additional comments on the environmental benefits of recycling. The Agency also requests comments on whether recycling should be addressed multilaterally through the Montreal Protocol or if the United States should take unilateral action to achieve additional environmental benefits.

B. Cost of Early Retirement and Retrofitting

In assessing the impact of eliminating CFCs and halons by the year 2000, the Agency has examined the costs to society to replace these chemicals. In its analysis ("Costs and Benefits of Phasing out Production of CFCs and Halons in the United States", EPA Review Draft, 1989,), EPA identified a wide range of methods and substitutes to replace CFCs and halons, and their associated cost. The Agency estimates that a complete phaseout of CFCs and halons could cost society approximately $2.7 billion by the year 2000.

These costs were estimated by assuming that recycling is used widely in the refrigeration, air conditioning and solvent sectors to achieve the reduction goals of a complete phaseout. If recycling is not adopted due to market inefficiencies, other more costly activities would have to be implemented by industry to reduce their use of CFCs and halons. These other actions could include prematurely retiring CFC-using equipment or retrofitting CFC-using equipment to work with alternative compounds. In the absence of an effective recycling program, the Agency believes, such actions could be required. Because of the complete phaseout of CFCs and halons by the year 2000, existing, long-lived equipment—such as automobile air-conditioners (11 years), large chillers (20–27 years) and residential refrigerators (19 years)—may be left without the compounds necessary to continue operations in the late 1990s and beyond. The Agency requests comments on this issue.

Manufacturers will continue to produce CFC-using equipment until substitutes are commercially available, which is likely to occur within the next two to five years. This newly manufactured equipment will require controlled substances well past the year 2000 to continue operating. The Agency believes that recycling could contribute to the availability of CFCs and halons that could be used to maintain CFC and halon-using capital stock without necessitating their early retirement.

To estimate the cost of other use-reduction activities, such as early retirement or retrofitting, the Agency developed a computer model to track the existing stock of CFC and halon-using equipment to the year 2030. By tracking this equipment the model estimates the quantity of CFCs and halons that would be needed to service existing CFC- and halon-using capital stock after 2000. This analysis indicates that between the years 2000 and 2030 the use-sectors will require between 140,000 and 146,000 metric tons of CFCs and between 75,000 and 97,000 metric tons of halons to maintain CFC and halon-using equipment.

Recycling CFCs and halons provides the opportunity for industry to postpone or even avoid entirely the need to retire prematurely or retrofit equipment requiring these chemicals. The Agency estimates that a recycling program in the major air-conditioning and refrigeration sectors, fully implemented by the early 1990s, could result in a net saving of over 159,000 metric tons of CFCs and 140,100 metric tons of halons by 2000. These quantities could be used to satisfy the servicing requirements of the various user industries throughout the equipment's useful life.

The total incremental cost to society, between 1989 and 2000, of achieving the phaseout without recycling in the air-conditioning and refrigeration sectors beginning 1991 is estimated to be $2 billion more than the cost of achieving the phaseout with recycling in these sectors. This represents a 66 percent increase in total costs. These increases in aggregate costs highlight the fact that many of the alternatives to recycling are expensive. The following table presents the cost on a "calculated level" basis (kilogram weighted by the chemicals ozone depleting potential) for retrofitting or retiring equipment, and recycling in each of the affected user sectors.

FIGURE 3.—DOLLARS PER WEIGHTED KILOGRAM

	Cost of retro-fit	Cost of early retire-ment	Cost of recy-cle
Mobile Air Conditioners	48	235	5
CFC–11 Chillers	6	33	2
CFC–12 Chillers	19	53	1
Household Refrigerators	N/A	1,865	29
Solvent Cleaning	2	8	−5

Source: "Costs and Benefits of Phasing Out Production of CFCs and Halons in the United States", (Draft), EPA, 1989.

Based on the analyses summarized above, EPA believes that recycling can serve as a bridge to alternative products without significant disruption in the utilization of the current capital stock of equipment for its full useful life. There are indications that industry also has noted the important role that recycling may play in the future. Recent announcements by 35 major automobile companies worldwide, the Mobile Air Conditioning Society, the International Air Conditioning Association and the Whirlpool Corporation, that service technicians will begin recycling refrigerant indicates industry's concern for ozone depletion and the need to preserve current supplies of CFCs. Indeed, the Agency is currently examining whether the CFC and halon using communities may already recognize the commercial importance of recycling and begin to recover and recycle controlled substances to avert costly retrofitting and premature retirement. It may be possible that "free-market" forces will encourage recycling by the user communities, obviating the

need for a regulatory program by the Federal government.

However, the market may not direct all users toward recycling in a timely manner. The community of independent service technicians who are responsible for maintaining a large percentage of CFC-using equipment may not be directed by any corporate policy toward recycling. Indeed, until the cost of virgin CFCs and halons reach a certain level, the cost of recycling, although relatively inexpensive when compared to premature retirement or retrofitting, may dissuade service technicians from recycling. Furthermore, even if recycling is less expensive than using virgin chemicals, service technicians may decide to continue to use virgin CFCs and simply pass on the cost since the cost of the controlled substance may be small relative to the overall cost of repair. Initial capital costs, training and certification, and additional labor required for recycling may hinder technicians from employing recycling practices despite its long-term economic benefit.

Agency analysis indicates that the price of CFCs should only gradually increase to the year 1999, assuming current trends toward recycling. However, on January 1, 1990, all manufacturers and importers who sell CFCs are taxed $1.37 per ozone depletion weighted pound ($3 per weighted kilogram). The tax will gradually increase to $2.65 per weighted pound ($5.80 per weighted kilogram) by 1994, and could increase to $5.35 per weighted pound ($11.79 per weighted kilogram) by the year 2000. This tax should further stimulate the transition to alternative chemicals and technologies. However, although this excise tax provides an additional economic incentive to reduce the use of these chemicals, the projected price increases coupled with the tax will provide a meaningful near-term incentive for recycling only in the industrial chiller and solvent applications. Other sectors such as mobile air-conditioning and household refrigeration face recycling costs which may not become economical until the mid-to-late 1990's.

Despite these circumstances, a number of large companies have begun to implement recycling programs. This decision is presumably the result of long-term strategic planning and a desire to be perceived as good citizens. However, these few announcements constitute only a small percentage of CFCs used in servicing. The large number of small firms may opt to purchase CFCs at the market price rather than recycle used refrigerant. The Agency, therefore, is concerned that the market, due to its decentralized composition of users who purchase these chemicals for servicing equipment, may impede some sections of the servicing community from adopting recycling programs. Without the recycling program society may face higher total cost at the end of the decade to either retrofit or retire equipment prematurely.

EPA applauds the current efforts of large corporations and industry trade groups that are encouraging recycling. However, the Agency is concerned that these efforts will not be sufficient to assure a supply of CFCs and halons in the year 2000 and beyond. EPA requests comments on whether the free-market participants, acting in their own self-interest, are likely to perceive future equipment retrofit and premature retirement costs more accurately than the Federal government, and whether the federal government should promote recycling through a national recycling program to insure a sufficient stock of chemicals for use after the year 2000.

C. State and Local Government Action

Several states have recently adopted laws that require recycling in specified user sectors, including mobile air-conditioning, building chillers and refrigeration. States that have promulgated statutes include Connecticut, Hawaii, Illinois, Colorado, Oregon and Vermont. Other states (California, Maryland, Massachusetts, Minnesota, New York and Wisconsin) have proposed legislation. Over 23 local jurisdictions have proposed recycling programs.

Although the Agency is encouraged by this activity at the state level, EPA is concerned that a patchwork of varying standards and program requirements may develop as a result. It is likely that different states will act to adopt more or less stringent standards. Differing standards may give rise to inefficiencies as manufacturers whose equipment may be harmed by a lower standard of refrigerant purity enhance their product to protect against contaminants. Higher standards would preclude the use of various types of available recycling equipment and burden service technicians who may need to perform additional work to ensure standards of purity. Some states may require recycling in sectors where recycling equipment may not be readily available. The Agency requests comments on how differing state standards may impede the "free-market" from recycling.

Although several states have adopted recycling programs, most have not. Since recycling would reduce the large social costs attributable to the retirement or retrofitting of equipment by the turn of the century, states that have instituted recycling are incurring costs for a program that will bestow financial benefits in the future. Because the CFC market is national (even international) in scope, there is no guarantee that those rewards will be received by the limited number of states that have instituted recycling. Similarly, present recycling efforts bestow immediate financial benefits on states that have not adopted such programs ("free-riders") by increasing the availability of CFCs and halons and thereby limiting price increases. Historically, Federal action to pre-empt states' rights has been justified on the grounds that one state's action cause undue harm to other states, rather than conferring benefits to other states. The Agency requests comments on this issue and whether it warrants Federal government action to address this "free-rider" concern. The Agency also requests comments on the potential Federalism and states' rights implications of such action.

The Agency believes that any national recycling program should build upon the states' experiences, and enhance and facilitate the intentions of the states by delineating standards, examining certification programs, engaging in research, and preparing public awareness campaigns. EPA believes that this would be an excellent opportunity to work with state and local agencies in implementing a program of international importance, capitalizing on their knowledge and experience with respect to this important project.

VI. Program Development Issues

A. Market Based Program

The Agency will investigate several areas of concern that will shape the scope and direction it may take to encourage recycling. First, if a recycling program is warranted, the Agency will examine possible regulatory schemes. One class of regulatory strategies involves the use of market-based instruments instead of traditional command-and-control methods. Because EPA's regulatory strategy for implementing the Montreal Protocol placed considerable reliance on market-oriented approaches, the Agency will examine similar market-based instruments to encourage recycling.

Among market-based incentives, the Agency will consider a deposit/refund system as one means to encourage recycling. In such a system, a deposit would be added to the purchase price of

the controlled substance at the appropriate point of sale. These deposits would be refunded to persons or firms that returned used controlled substances to designated collection points. The existence of the refund would motivate many users to recycle controlled substances rather than allow them to be emitted into the atmosphere. The net effect of the deposit/refund system thus would differ depending on the actions of users: Those users who choose to recycle would bear only the additional transactions costs associated with submitting refund claim, but users who continue to allow controlled substances to be emitted would pay an implicit tax on this activity.

The existing economic literature describes how the deposit and refund should be set to maximize net social benefits. In general, the deposit would be set equal to the expected value of the environmental damages resulting from continued emission. The refund would be set equal to the expected value of environmental damages avoided through recycling. In the special case where recycling creates no environmental harm, the deposit and refund would be identical. However, the deposit would exceed the refund to the extent that there are environmental damages attributable to recycling.

Deposit/refund systems may offer advantages over other regulatory approaches because they fundamentally alter the regulatory agency's compliance and enforcement function. Instead of policing the actual behavior of large numbers of firms and individuals, EPA would need to monitor the points at which the deposit is levied and the refund is disbursed. Furthermore, this oversight would be focused on ensuring sufficient documentation that sales of controlled substances were being properly recorded, and that correct refunds were being provided to eligible users. The Agency requests comments on the likely size of any compliance program directed at the distributors of these chemicals.

EPA would need to develop estimates of the environmental damage caused by the emission of controlled substances. Since this information is necessary to support any rulemaking, it does not involve any additional expenditure of Agency resources in data collection and analysis. The Agency requests comments on the usefulness of this data to set an effective deposit fee that would encourage recycling.

EPA requests comments concerning how a deposit/refund analysis concerning the levels at which the deposit and refund should be set so as to eliminate existing quantifiable market inefficiencies. EPA is also interested in comments addressing where each element of such an instrument should be targeted and how they should be designed so as to reduce or minimize transaction and administrative costs. Finally, EPA requests comments and analysis as to whether this or any other regulatory approach significantly enhances existing incentives to recycle controlled substances that are generated by the exemption from excise taxation already provided to recycled chemicals.

B. Direct Regulations

The Agency is also investigating mandating recycling in those sectors where it is cost effective. The remaining discussion within this section addresses concerns and issues related to this regulatory approach.

Examination of Cost Effectiveness and Technical Feasibility for Direct Regulations

To develop a mandatory recycling program the Agency would undertake engineering and technical analyses to determine whether recycling is cost effective and technically feasible within each of the user sectors. For such a program, the Agency has developed the following workplan.

First, the Agency would conduct a survey of all CFC and halon user sectors to assess the environmental protection benefit and practicality of recycling during manufacture, servicing and disposal. These assessments would take into account such factors as costs, engineering feasibility and magnitude of emission reductions. The type and quantity of controlled substances currently used in each application and their expected substitutes would also be identified. Once this background research is completed, the Agency would focus on those sectors where recycling is most feasible, as determined by available technology and its cost relative to reductions in controlled substance use.

As noted in section I, EPA would likely first develop regulations addressing the mobile and stationary air conditioning and refrigeration sectors. However, this background research would serve as the basis for further regulatory or voluntary recycling programs affecting other use sectors, if necessary.

Once the Agency identified likely sectors for inclusion in a recycling program, a recycling standard would be established. To do this, the Agency would evaluate the contamination in normally operating CFC and halon systems within that sector. At the same time, the Agency, in conjunction with industry and environmental groups would determine the technical and chemical criteria for acceptance of an appropriate standard of purity for recycled CFCs and halons. Where necessary, a standard of purity would be established to protect the compound-using equipment from contaminated controlled substances that could damage that equipment.

EPA analysis would examine all technical options for recycling CFCs including in-system, portable, truck mounted, skid mounted, local and regional reclaiming facilities and manufacturing or feedstock facilities. It would also examine potential design changes to existing and future systems that may facilitate recapture of CFCs and halons. In addition, the Agency, working in conjunction with industry, would identify and resolve technical barriers to recycling such as field measurement for refrigerant contamination, identification of CFC type, oil disposal and contamination, use of appropriate containers, cross contamination of CFC types, storage and transportation of contaminated and recycled CFC.

Finally, the Agency would identify appropriate measures for conservation of CFCs and halons to reduce leaks and unnecessary emissions during service and maintenance.

This work would serve as the basis for establishing direct regulations for individual sectors, or assist in the development of a voluntary program in those cases where such a program appears to be more appropriate. The Agency requests comments on this approach to the development of a mandatory recycling program.

Compliance Monitoring

Compliance monitoring for a mandatory recycling program is a major concern for the Agency. The large number of companies potentially involved in recycling in each sector may limit the scope of the Agency's inspections, although it could continue to require recordkeeping and reporting to document actual recycling. As a result, monitoring programs may differ from sector to sector depending on the number of recyclers involved, the required recycling or reclamation equipment, and whether the recovered controlled substance can be recycled on-site or off-site. Finally, the Agency is limited in funds available for the development of new programs. To the extent feasible, EPA desires to build upon any existing programs that may facilitate compliance to its recycling efforts. In light of these concerns, this

section outlines several general mechanisms that the Agency is considering to monitor compliance with a mandatory recycling program.

One option would be to simply limit the sale of controlled substances to commercial users or vendors and require that each purchase recycling equipment. This would eliminate the possession of controlled substances by consumers who would not own recycling equipment. This would also eliminate the emissions from the mobile air-conditioning sector, where do-it-yourselfers attempts to repair air-conditioners can result in ongoing emissions. This compliance program assumes that all repair technicians would be knowledgeable about the recycling regulation, and would recycle. The advantage of this program is its cost of administration: Monitoring of compliance would require a one-time review of sale records of commercial vendors to ensure that technicians have purchased recycling equipment.

A more complicated compliance program that could be used in conjunction with the above, would require that all technicians meet certification requirements. A government agency, industry trade group or educational organization relevant to each sector could bestow this certification on an applicant once they had "passed certain" requirements. The Agency is considering the need to require companies affected by a recycling program to have at least one certified technician on staff. A certification program ensures that technicians know how to properly utilize recycling equipment. EPA requests comments on certification programs as a means to monitor compliance with recycling regulations.

To determine compliance with these requirements, the Agency could rely on several mechanisms. Unannounced inspections could be conducted during which inspectors request proof of technician certification and verify the presence of an on-site recycling machine or the existence of a contractual relationship with an off-site recycler. One time or annual reporting, where recyclers would provide records of the volume of controlled substance recovered, could be required. Alternatively, the Agency is considering the need to require technicians to maintain logs of recycling activities that could be reviewed by inspectors. Such programs are labor intensive and would incur substantial costs to operate. For these reasons, the Agency is seeking comment on the need for such a program. Alternatively, the Agency would encourage citizen suits that would allow concerned citizens to monitor recycling activities and report non-compliance with these requirements to EPA. The best way to do this is to require that compliance data be made available to the public. The Agency's goal is to develop a compliance monitoring program that minimizes costs to both government and industry while assuring a high degree of compliance.

Recycling at disposal also presents significant issues. The Agency is concerned that disposal technicians may be less familiar with the needs and requirements of a recycling program than servicing or operating technicians, and as a group they may be difficult to monitor. The Agency solicits comments on any appropriate compliance program directed at monitoring recycling or reclamation at disposal.

C. State and Federal Roles

The Agency is investigating whether the compliance and enforcement program for a mandatory recycling program should be a federal program, a state program, or a joint program between the state and the federal government. There are several examples of national programs that represent the spectrum of these possibilities. EPA's Office of Mobile Sources operates a program directed toward achieving compliance with motor vehicle emission standards and fuel standards. The program targets over 175,000 muffler repair shops, retail fuels outlets, and fleet fueling facilities for its compliance monitoring activities. Although there is some state involvement, the program is managed primarily at the federal level.

The program uses unannounced inspections at shops within the regulated community to determine compliance with the program. Inspectors check the nozzle size of pumps, pump labels, and the standard of the gasoline, and may fine the shop at the time of the inspection if some categories of violations are detected. Between 10,000 and 25,000 fuel pump inspections are conducted annually by federal inspectors.

The Underground Storage Tank Enforcement Program provides an example of a program that relies heavily on state participation for compliance and enforcement monitoring. The regulated community for this program is comprised of over 700,000 owners and operators of underground storage tanks who must ensure that tanks do not contaminate ground water. Although EPA has developed regulations to ensure that owners detect and fix leaking tanks, the authorizing statute allows states to develop EPA approved programs to operate in lieu of the federal program. State programs must contain technical requirements that are "no less stringent" than the federal requirements and provide for "adequate enforcement" of compliance. The Agency reviews and approves state plans that meet the general goals of the federal Underground Storage Tank Program. A mandatory recycling program could be designed similarly. If such a program is designed, an important issue will be the source of funding for the states to monitor compliance.

The Agency currently is investigating the possibility of implementing a federal program that defines the basic technical requirements of the program that would allow states to develop compliance and enforcement programs if they desired. EPA requests comments on the proper role for both state and federal agencies in implementing a recycling program.

D. Pre-Emption of State and Local Regulations

The Agency is investigating the extent to which a mandatory recycling program would pre-empt state and local regulations controlling the use and emissions of CFCs and halons. Section 159(b) of the Clean Air Act provides that if EPA adopts a regulation to protect the stratosphere, "no state or political subdivision thereof may adopt or attempt to enforce any requirement respecting the control of any such substance, practice, process, or activity to prevent or abate such a risk, unless the requirement of the state or political subdivision is identical to the subject of such regulation". The House Committee report for section 159(b) explains: "After the effective date of any * * * Federal regulation, States and localities would be preempted from adopting or enforcing any law or regulation pertaining to the same risk as was addressed by the Federal regulation, unless the State or local law or regulation were identical to the Federal regulation."

"Thus, for example, if the Administrator were to promulgate regulations limiting or prohibiting use of halocarbon compounds as foaming or blowing agents in certain industrial processes, States and localities would be preempted from regulating or prohibiting such use of such compounds, except in accordance with the Federal regulation. State or local regulation of other uses of such compounds would not be pre-empted thereby, however * * *." H. Rep. No. 95-294, 95th Cong., 1st Sess. 99 (1977). Thus, EPA does not interpret section 159(b) as meaning that the adoption of any federal regulation of

any substance, practice, process or activity would pre-empt the entire field of stratospheric ozone regulation. Indeed, as explained in its August 1988 final rule, the current regulation that limits the production and importation of controlled substances does not pre-empt states and localities from limiting emissions and uses of these chemicals in the various user sectors by direct regulations (53 FR 30566, 30593 (August 12, 1988)).

The Agency believes that a federal regulation mandating recycling in a defined user-sector would pre-empt state laws affecting the same use, but would not pre-empt states or local governments from regulating other sectors. A recycling regulation directed toward automobile air conditioning does not preclude states from implementing recycling regulations in areas such as solvents, sterilants or other air-conditioning and refrigeration sectors. Federal regulations would only pre-empt those state or local regulations in those sectors federally regulated.

Finally, the Agency is examining whether section 159(b) pre-empts states from implementing compliance monitoring and enforcement programs that are adapted specifically to existing state programs and funding to ensure compliance of the national regulation. The Agency is interested in designing its program to take advantage of such state programs as motor vehicle inspections, building inspections or sales tax collection programs that would allow the state to monitor whether industry is complying with the recycling regulations. The Agency could outline minimum compliance requirements but allow flexibility for states that believe that they could fashion a more effective program to do so without concern for pre-emption. The Agency requests comments on this issue.

VII. Use Applications Descriptions and Issues

The Agency is considering, as one option, a regulation that mandates recycling by prohibiting the release of CFCs and halons through the use of capture/recycle/reclamation equipment in certain applications. Initial ideas for various end-use areas are presented below, as well as EPA's response to specific comments raised by the industry recycling petition. The Agency requests comments on all issues including the following specific considerations: Environmental benefits of recycling, cost-effectiveness, administration costs, enforcement and compliance issues, and state preemption.

A. Specific Responses to the CFC Alliance Petition

The Alliance requested that a recycling program address only CFCs that are refrigerant working fluids contained within or used in existing refrigeration equipment. The Agency also believes that a program that targeted refrigerants would capture a significant proportion of the CFCs that could be recycled. Indeed, as noted in section II, the Agency would initially focus on programs in the refrigeration and air conditioning sectors if direct regulations are appropriate. However, the Agency is concerned that other sectors, where recycling is also technically feasible, could also contribute significantly to the recapture and re-use of these chemicals. The Agency believes it should examine all sectors where recycling is a technical option in any evaluation of a mandatory recycling program. The Agency requests comments on the scope of sectors that should be covered by a recycling program.

The Alliance also requested that EPA consider a de-minimis level of refrigerant charge below which recycling would not be required. Further, the Alliance suggested a de-minimis charge of 2 kilograms. Although the Alliance implied that releases below 2 kilograms did not constitute a potential threat to the environment, it did acknowledge that this de-minimis level exemption should not apply to the mobile air-conditioning sector. The Alliance suggested that the Agency conduct a study of the economic feasibility of recovery and recycling requirements for stationary air-conditioning and refrigeration units below the de-minimis or threshold level. In response, the Agency requests comments on the desirability of having such a threshold level below which CFCs would not need to be recycled.

It is important to note the rapid technical developments of recycling in such sectors as household refrigeration, a sector where the threshold level would exempt recycling. Whirlpool Corporation recently announced a recovery technology that would allow service technicians to capture refrigerants while servicing household refrigerators, and plans to require that Whirlpool service technicians adopt this technology. The Agency believes that recent public controversy over venting CFCs from household refrigerators and this new recapture technology from Whirlpool make mandatory recycling possible within this sector.

The Alliance also stated that the Agency should direct a recycling program toward recovery only during routine maintenance or servicing of equipment throughout its useful life. The Alliance believes that recovery of refrigerant CFCs from obsolete or worn out equipment requires further study to assure that regulation does not induce undesirable practices in disposal of such equipment.

EPA agrees that it should first address recovery at servicing if direct regulations are deemed appropriate. The Agency also agrees that further study is necessary of the potential impact of a program to recover CFCs at disposal. In particular, EPA is concerned that compliance monitoring and enforcement may become more difficult if a recycling program were extended to CFCs at the time of equipment disposal. In many cases the removal of equipment at the time of disposal is done by service people who do not also maintain equipment; their responsibility is solely to remove and dispose of the equipment. Junked cars and old refrigerators are removed to landfills, while chillers may be destroyed by wrecking cranes. Any program to require recovery at disposal must ensure that disposal service people are aware of the program and have received proper training in the removal of the CFCs.

Despite these problems, the Agency estimates that a significant percentage of CFCs exist within obsolete equipment and that recovery of this volume may provide a significant source of used CFCs for recycling. Moreover recycling at disposal is a growing practice in the area of certain metals and of increasing concern where environmental toxics are present (*e.g.*, PCBs). The Agency requests comments on these issues, especially in the area of disposal of automobile air-conditioners, large building chillers, residential refrigerators and commercial refrigerators.

The Alliance also requested that EPA provide a grace period for existing equipment that was not engineered and designed to facilitate the recovery of CFCs. In response, the Agency requests comments from the public and industry on possible design changes that would facilitate reclamation, estimates of the costs of such changes and the likely quantity of CFCs recaptured if retrofitting were to occur, on how the Agency would differentiate between equipment entitled to a grace period and equipment that is not entitled to such a period.

B. Mobile Air-Conditioning

Mobile air-conditioning is the largest single use area of CFCs in the United

States. It is estimated that mobile air-conditioners consumed over 48,000 metric tons of CFC–12 in 1989. This use accounts for 21.3% of total CFC use in the United States.

CFCs escape from mobile air-conditioners in various ways. Many releases occur during servicing, when mechanics customarily empty the air-conditioner of remaining refrigerant before making repairs. Additional refrigerant is added and routinely flushed through the system to test for leaks. Extra refrigerant is often purged to prevent system overcharge. Other CFC releases occur at the factory when the air-conditioner is first charged, during automobile accidents, and when vehicles are junked.

In a successful cooperative project, a standard of purity for recycled refrigerant was developed so that mobile air-conditioning refrigerant could be recycled and safely reused to the satisfaction of all industry members. The standard of purity was developed as a joint project involving EPA, the Mobile Air-Conditioning Society, the Motor Vehicle Manufacturers Association, the Automotive Importers of America, the Society of Automotive Engineers, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), manufacturers of recovery/recycle devices, air-conditioning service shops, individual auto manufacturers, and other automotive industry representatives as well as environmental groups.

EPA's cooperative project with the automotive industry was initiated in response to concerns about stratospheric ozone depletion. EPA sponsored an engineering study to test the quality of used refrigerant in 227 automobiles of different makes and models, operated in different geographical regions under various driving and weather conditions. The engineering and chemical analyses were performed by EPA's Air and Energy Engineering Research Laboratory (AEERL). The study concluded that refrigerant does not degrade significantly with use. Based on the study, industry and EPA representatives agreed that recycled refrigerant should be held to a standard of purity for oil and moisture contamination comparable to that of refrigerant in automobiles that have been driven approximately 15,000 miles with properly working air-conditioners.

The Society of Automotive Engineers (SAE) is publishing the standard of purity for mobile air-conditioning refrigerant (J1991) and recommended practices for service procedures for containment of CFC–12 (J1989) and for extraction and recycle equipment for mobile air-conditioning systems (J1990). These guidelines reflect a consensus of the EPA/industry cooperative project and other industry experts on proper procedures for recovery and recycle of CFC refrigerants. The J Standard and Recommended Practices will be internationally accepted and implemented among industry members.

Underwriters Laboratories Inc. (U.L.) has established a Standard for Safety, U.L. 1963, which provides guidelines for the certification of automobile air-conditioning recovery/recycle equipment. U.L. 1963 specifies the refrigerant purity standard (SAE J1991) as well as other aspects of product safety which must be demonstrated by equipment in order to be certified. Manufacturers must submit equipment to U.L. or other certification laboratories to receive certification that their recycling equipment can meet these safety and refrigerant purity standards. To date, Murray Corporation, Robinair Division of SPX Corporation, and White Industries, Division of K-Whit Tools and Draf Industries Incorporated, have received certification for recovery/recycle equipment and other manufacturers have equipment under evaluation. This process took 12 months from the design of the sampling to develop purity standards to the first certification of equipment.

Refrigerant capture/recovery equipment is currently available to service technicians. This device captures refrigerant from automobile air conditioning systems, and holds the used refrigerant in a proper container for pressurized gases. The technician can recycle the refrigerant on-site using certified equipment, or send the refrigerant off-site to a reclamation center.

Thirty-five manufacturers of automobiles sold in the United States support recycling and have voluntarily accepted the refrigerant standard of purity for their automobiles under warranty. These manufacturers have authorized their service establishments using certified recycling equipment to service mobile air-conditioners under standard warranty coverage.

Many auto manufacturers have voluntarily taken additional steps to significantly reduce CFC emissions from mobile air-conditioners. General Motors Corporation and Volvo Cars of North America will require their dealers to use U.L. Certified recycling equipment by model year 1991. Ford Motor Company expects that all Ford and Lincoln-Mercury dealers will have U.L. approved CFC recycling equipment by the 1991 model year. Nissan Motor Company and Toyota Motor Corporation have also announced initiatives to reduce CFC emissions and recycle. The Hertz Corporation has stated that all of its maintenance locations in the United States will use certified recycling equipment during repair work.

While considerable progress has been made on a voluntary basis, many may continue to service automobile air-conditioners without proper equipment, leading to unnecessary refrigerant emissions.

The Agency believes that it is technologically possible to prohibit the unnecessary venting of CFCs during manufacture, leak detection, system recharge, service repairs, and other normal procedures which lead to refrigerant releases in automobile air-conditioners by January 1, 1992. The recent certification of recycling equipment by Underwriters Laboratory and the sale of such equipment on the market indicates that recovery, recycling and reuse of refrigerant from automobile air-conditioners is technically feasible.

The Agency is requesting comments on the advisability of phasing in mandatory recycling in two stages, if such an approach is deemed appropriate. Since some principally large dealerships and service stations have already begun to use recycling equipment in their shops, the Agency is considering a federal regulation which would phase-in mandatory recycling based on shop size.

The phase-in regulation under consideration would accelerate the schedule for mandatory recycling in large shops, requiring such shops to own and use recovery/recycling equipment by an early date. All other shops would be required to own and use recovery/recycling equipment at a later date, but likely within one year of large shops.

The Agency is also considering mandatory CFC refrigerant capture upon disposal of automobiles with A/C systems. A recent survey of automobile junkyards (New Jersey Department of Environmental Protection, 1989) indicates that more than one-fourth of incoming vehicles contained refrigerant charge. Comments are sought on the technical and economic feasibility of requiring refrigerant capture upon disposal of automobiles by January 1, 1992.

A federal regulation mandating the capture of refrigerant normally vented from automobile air-conditioners would require that refrigerant for reuse in automobiles, light trucks and other vehicles with similar CPC–12 systems

meet a minimum standard of purity. Systems used on vehicles for refrigerated cargo which have hermetically sealed, rigid-piped systems would not be covered in this standard. EPA is considering requiring that the standard of purity for recycled CFC–12 refrigerant for use in automobile A/C systems (that has been directly removed from automobile A/C systems and intended for use only in automobile A/C) meet the SAE J1991 standard (levels of contaminants shall not exceed 15 ppm of moisture by weight, 4000 ppm of oil by weight, and 330 ppm of non-condensable gases (air) by weight).

In the future, if SAE modifies the contaminant levels in the current standard of refrigerant purity, the Agency would evaluate the technical criteria for the change and may amend the regulatory requirements accordingly.

The Agency is also considering a requirement that recycling equipment meet certification standards, if EPA opts for a mandatory recycling program. Equipment used for recycling CFCs from automobile air-conditioners would be certified to meet specifications for CFC–12 recycling and/or recovery, and recharging systems, according to SAE Recommended Practice J1990 for Extraction and Recycle Equipment for Mobile Automotive Air Conditioning Systems.

Refrigerant recycle equipment could be certified by Underwriters Laboratory or an equivalent certifying laboratory to ensure the equipment meets the standard of purity. The certification requirements for equipment includes safety, adequate operating instructions, equipment functionality, and assurance that the equipment can meet the minimum standard of refrigerant purity.

While there may be recycling equipment available on the market which has not been certified by U.L. or another third party certification laboratory, the Agency may mandate that only certified equipment sold in the market would satisfy its requirements. Equipment certification may be necessary to assure customers that reuse of used refrigerant recycled from equipment will not cause failure of the automobile air conditioning system due to unacceptable contaminant levels.

The first recycling equipment to pass UL testing was certified in the fall of 1989. Prior to this certification, small numbers of recycling equipment had been sold and used in the field to service automobile air-conditioners. The Agency requests comments on the number of recycling units that may be in use or on the market without certification, and whether that equipment should be grandfathered to meet all the safety requirements and refrigerant purity standard. The Agency also requests comments on whether the equipment should be recertified, and whether the testing should occur in the field or at a testing center.

If a service person owns a refrigerant capture device intended only to recover CFCs, then all requirements outlined in section VII. C. (Stationary Refrigeration, and Air conditioning and Refrigerated Transport) regarding storing, transporting and refrigerant reuse would have to be followed.

The Agency intends to evaluate various certification and training programs for automobile air conditioning technicians. As discussed in the earlier section on compliance, one option for direct controls would be that any person who services an automobile air conditioner must own recovery/recycling equipment and be certified that he or she can use it properly.

There are existing independent training organizations which certify automotive technicians, such as Automotive Service Excellence (ASE). It may be possible to use such organizations for the certification requirement of this regulation if the proper refrigerant conservation and recycling procedures for diagnosing and servicing automobile air-conditioners were incorporated into their programs. However, the use of these organizations to meet the requirements may have to be phased in over several years. Tests given by these organizations are only administered at certain times, and any requirement must be flexible enough to certify the large volume of technicians expected to purchase recovery/recycling equipment and refrigerant for service.

To ensure that all mechanics, technicians or other service personnel can properly diagnose, repair and service automobile air conditioning systems with recovery/recycling equipment, existing training organizations, automobile dealership training programs, vocational schools and other training and educational programs could incorporate proper refrigerant conservation and recycling procedures into their existing curricula. The Agency requests comments on existing automobile air-conditioning service training programs and comments on how to best incorporate new service procedures into their curricula.

EPA is investigating the possibility of limiting the sales of refrigerants to only those persons who are certified and can show proof of ownership of recovery/recycling equipment as part of a regulatory program. This would ensure that only trained service technicians with equipment could obtain replacement refrigerants. Distributors would be held liable for sale to non-certified people. The Agency would monitor compliance by reviewing sales records or logs maintained by the distributors, accompanied by inspections and citizen suits.

The Agency is seeking comments on this and other compliance monitoring procedures applicable to mobile air conditioning that, if adopted, would ensure proper regulatory oversight of this sector. EPA is also interested in any mechanism to ensure recapture of CFCs at the time of disposal of the automobile air-conditioner.

EPA has recently published two brochures, "Help Protect the Ozone Layer: Recycle the Refrigerant In your Car's Air Conditioner" and "Refrigerant Recycling in Mobile Air-conditioners: Guide for Professionals," (Sept. 1989). These two brochures were designed for the service professional and their customers to explain the importance of refrigerant recycling for protection of stratospheric ozone.

The Agency requests comments on the usefulness of these brochures and requests ideas for expanded brochures or other methods to generate public and industry awareness of recycling activities and regulations.

C. Stationary Refrigeration and Air Conditioning and Refrigerated Transport

CFCs are used in a wide variety of stationary refrigeration and air conditioning applications in the United States. The Agency is considering including the following sectors in a recycling program:

Retail Food Storage—refrigeration systems for food and beverages in grocery and convenience stores.

Process Refrigeration—refrigeration systems used in industrial processes (e.g. petroleum refineries and chemical manufacturing), commercial ice makers, and ice skating rinks.

Cold Storage Warehouses—refrigerated spaces such as warehouses used to store meat, produce, dairy products and other perishable goods.

Chillers—air conditioning systems in commercial and industrial buildings (e.g. shopping malls and office buildings).

Refrigerated Transport—refrigerated trucks, trailers, and rail cars.

The CFCs used for these applications vary depending upon the equipment design and specific cooling criteria. The CFCs most frequently used in these applications include CFC–11, CFC–12, CFC–114, and CFC–115, which is usually used in a blend with HCFC–22 as Refrigerant 502. HCFC–22 is also widely

used in a variety of refrigeration and air conditioning equipment.

Approximately 55,000 metric tons of CFCs were used in stationary refrigeration and air-conditioning systems and refrigerated transport in 1989. This represents approximately 21% of U.S. consumption of CFCs.

The Agency is evaluating requirements, as one possible regulatory program, for a federal regulation prohibiting the release of refrigerant from stationary refrigeration and air conditioning systems and refrigerated transport, by requiring the use of devices to capture, recycle or reclaim refrigerant. This would be directed at the manufacturers, owners, operators, and installers of such systems, and the technicians who service such equipment.

The Agency is considering, as one option, a requirement that CFCs be captured, recycled or reclaimed whenever service, installation, or disposal activities that could result in releases of the controlled compounds are conducted on stationary refrigeration systems or mobile transport systems.

In addition, the Agency is considering requiring that any CFC-based refrigeration unit or system manufactured after a certain date contain fixtures and mechanical means sufficient to permit servicing and recovery of CFC refrigerants without significant release of the compounds into the atmosphere.

Under a possible mandatory recycling regulatory program directed at these refrigeration and air conditioning sectors, recycled or reclaimed compounds also would have to be processed to the extent necessary to make them suitable for reuse, either within the system from which they were recovered, or through processing at recycling centers. The Agency is requesting comments on the appropriate standard of purity for recycled refrigerant for stationary air conditioning and refrigeration systems and refrigerated transportation systems. The ARI Standard 700–88 "Specifications for Fluorocarbon Refrigerants," is a standard of purity defining acceptable levels of quality for new, reclaimed or repackaged refrigerants used in air conditioning and refrigeration products. The standard defines and classifies refrigerant contaminants primarily based on standard and generally available test methods and specifies acceptable levels of contaminants (purity requirements) for various fluorocarbon refrigerants recovered off-site from the recycling center. The refrigerants covered by ARI 700 are: CFC–11, CFC–12, CFC–13, HCFC–22, CFC–113, CFC–114, CFC–500, CFC–502, and CFC–503.

The Agency requests comments on whether the ARI Standard 700 is appropriate to adopt for regulatory purposes to ensure refrigerant purity. The Agency solicits comments on whether the ARI standard may preclude certain recycling techniques and whether a reasonable standard of purity for on-site recycling may be necessary to develop as a supplement to ARI–700.

The Agency is also interested in whether there is a need for different refrigerant purity standards for the various refrigeration/air conditioning systems (chillers, process, retail food storage, cold storage warehouses, refrigerated transport) and what appropriate levels of refrigerant purity in each area would be.

The contamination of refrigerant oil and its proper disposal also needs to be evaluated. The Agency is requesting data and comments on the contamination levels of refrigerant oils under normal operating conditions and in worst case failures. The Agency is also requesting comments on methods of proper disposal of refrigerant oil that is in the refrigeration/air conditioning system after evacuation, or that is left over from the recovery recycling/reclamation process.

To determine the potential scope of a mandatory recycling program for the stationary refrigeration and refrigerated transport areas, the Agency is requesting descriptions of current service practices and techniques on this equipment. What are the technical difficulties in capturing, recycling or reclaiming refrigerant mixtures and azeotropes? What part of current equipment designs preclude refrigerant capture or recycle? How frequently are capture/recycle techniques currently practiced in the field? If refrigerant is captured or recycled, what type of equipment is currently used and where was it purchased?

In addition, the Agency requests comments and information on the type of refrigerant recovery/recycle equipment used on-site. How do technicians determine the purity of refrigerant in order to reuse it in the field? EPA requests comments on testing methods that can be used on-site to determine the extent of refrigerant contamination.

The Agency is considering requiring that CFCs taken to an off-site facility to be recycled or reclaimed not be mixed with other compounds, such as other refrigerant or solid waste not ordinarily found in used refrigerants. The Agency seeks comments on the need for, and ways to implement, this requirement. In addition, in-coming recovered CFCs to be recycled or reclaimed could be tested by the recycler to determine their contents. The Agency is considering allowing materials to be rejected by the recycler/reclaimer based on failure of the provider to supply the required lack-of-contamination certification discussed above.

In this scenario, any material rejected by a recycler/reclaimer would remain the responsibility of the refrigerant provider who would have to handle and dispose of the refrigerant in a manner consistent with any applicable requirements of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580, as amended) and its implementing regulations in 40 CFR chapter I, subchapter I—Solid Wastes, particularly parts 260–268.

The Agency is evaluating the RCRA and Department of Transportation requirements (49 CFR chapter I, subchapter C—Hazardous Materials Regulations) that may be relevant to a recycling program for CFCs and halons. The Agency requests comments on the requirements in these areas and any conflicts with existing laws or regulations that may unnecessarily impede widespread adoption of CFC recycling.

As with the mobile air-conditioning sector, the Agency is considering restricting the purchase of refrigerant for servicing to certified technicians under a mandatory recycling program. A program would have to be developed to certify and license technicians to ensure adequate knowledge of refrigeration systems, refrigerant conservation methods during installation, service and dismantling of systems, and demonstration of proper recovery/recycling techniques.

There are existing training and educational organizations in the refrigeration industry, such as Refrigeration Service Engineers Society (RSES). It may be possible to use such organizations if a certification requirement for direct regulations as described in this ANPRM is adopted. The Agency is requesting information on existing industry or state/local government programs to certify refrigeration technicians and is requesting comment on the appropriate formulation of a certification programs within these sectors.

Compliance monitoring will be an important part of this CFC conservation and recycling regulation. The Agency is seeking comment on whether the monitoring and compliance program detailed in section VI. B. of this ANPRM

is appropriate for the stationary air conditioning and refrigeration and refrigerated transport industries if the Agency opts for direct regulations. Essentially, the Agency is investigating procedures by which it would ensure that all technicians, whether they install, service or dispose of equipment, capture and recycle CFCs. Elements of such a program could include either a certification program, restriction of refrigerant sales to certified technicians, log books of recycling and servicing events, or the presence of either an on-site recycling machine, or recapturing equipment and a contract with an off-site recycler or waste hauler for the recaptured chemical. The Agency requests comments on which element, or mix of elements would be appropriate for a compliance program for this sector under a mandatory recycling program.

D. Refrigerated Appliances

It is estimated that over 2800 metric tons of CFC–12 will be used in the production of refrigerated appliances in the United States in 1989. Household refrigerators and freezers are by far the largest CFC users among these appliances. Other refrigerated appliances using CFCs include dehumidifiers, vending machines, water coolers, and small ice machines.

The CFC–12 charge per refrigerator and freezer has been estimated to be .19 kg and .31 kg, respectively. Industry experts report that 0.15% of all refrigerators and freezers are serviced every year and that the CFC–12 charge is completely vented and refilled during servicing. Recycling equipment is expected to reduce emissions during servicing by 70–90%, and at rework by 50–75%.

During current service procedures, technicians vent refrigerant charge before servicing, perform leak testing with refrigerant, and recharge systems with new refrigerant upon completion of service.

Refrigerants in appliances can be recycled by either of two methods. CFCs may be captured and taken to an off-site facility for recycling and reclamation or they may be captured with portable recycling equipment and recycled on-site.

In October 1989, Whirlpool Corporation developed a seven layer plastic bag to catch and hold refrigerants during servicing of household refrigerators and freezers. Following servicing, the technician returns the used refrigerant to a central recovery center where refrigerant is held for recycling.

This technology has presented a new recycling opportunity for household refrigerators and freezers. The lightweight, portable bag can quickly capture refrigerant for recycling and presents an alternative to heavier recapture equipment that may be more difficult to transport and use during household service visits.

Although the light-weight portable bag is easier for a technician to use on service calls in the home, recovery efficiency would be greater with more elaborate equipment. The Agency is requesting information about any other recovery techniques and equipment that exists to service refrigerated appliances. The Agency requests information including advantages and disadvantages of any other recovery techniques in terms of weight, difficulty to use during service, and efficiency rates. The Agency will study the technical and economic feasibility of recovery and recycling in the home appliance sector, which typically has a charge less than 2 kg.

Voluntary recycling begun in this sector indicates that cost-effective recycling of refrigerated appliances is possible. Without regulation, however, many service contractors may continue to service refrigerated appliances without proper equipment to capture unnecessary emissions.

The Agency is evaluating requirements for a Federal regulation which would prohibit unnecessary release of refrigerant from home appliances, particularly household refrigerators and freezers during manufacture, servicing and disposal, in addition to the deposit/refund program outlined in this ANPRM.

The Agency is seeking comments on the feasibility of mandatory recovery/recycling for refrigerated appliances other than household refrigerators and freezers. The Agency is requesting comments on the need to develop a standard of purity for refrigerated appliances that specifies the quality of refrigerant necessary for acceptable reuse after recycling or reclamation, and any information to indicate the levels of contaminants that currently exist in normally operating refrigeration systems. The Agency is requesting comments on whether recovery equipment should be certified to capture refrigerant at a specified level of performance or efficiency. EPA is seeking additional information regarding the quantity of refrigerant charge present at disposal of refrigerated appliances and information about the existing infrastructure for refrigerant recovery at appliance disposal.

Household refrigerators and freezers contain an average of two pounds of CFC–11 in foam insulation. Almost all the CFCs in the foam are present at appliance disposal if the cabinet is intact.

EPA is not aware of any study which shows that CFCs can be cost-effectively recovered from foam. Possible technologies for capturing CFCs from foam include a method where CFCs may be extracted from the insulation by compressing and breaking up the foam. The CFCs could then be captured and recycled using condensation and carbon adsorption technologies. The Agency is requesting comments on the current state of technology both here and abroad for recovery and recycling of CFCs from refrigerator and freezer foam, the quantity that is expected to be recoverable and reusable, and the economic feasibility of technology to capture CFC from appliance foam insulation.

An enforcement program similar to that of automobile air-conditioning may be applied to the refrigerated appliance industry in a mandatory program. All appliance manufacturers and refrigerated appliance service contractors could be required to provide evidence that they possess equipment to capture and/or recycle refrigerants. Service technicians could be required to successfully complete a written test which would demonstrate adequate knowledge of refrigeration systems, refrigerant conservation methods and proper recovery/recycling techniques to receive certification. Service shops that recycle refrigerant on-site may be required to use equipment certified to recycle to a specified standard of purity for refrigerated appliances. Refrigerant sales could be limited to certified technicians who owned recovery/recycling equipment.

A public awareness campaign could be launched to educate industry and the public on recycling activities and regulations for refrigerated appliances. This may include literature mailings to trade associations, labelling requirements for refrigerators and freezers, and distribution of an EPA recycling brochure to be distributed to appliance users through industry members. The Agency is seeking comments on other possible channels of communication and additional methods to heighten public awareness.

E. Solvents

The Agency is investigating the need for a mandatory recycling program for the solvent industry. However, the situation in this use sectors differs markedly from refrigeration. First, equipment has a substantially shorter useful life. Second, industry is already

shifting away from CFCs to substitutes. Third, substantial recycling is already occurring. As a result, the Agency is seeking comment on whether to require mandatory recycling or to focus its efforts on other aspects of encouraging solvent recycling. A deposit/refund program would certainly encourage solvent recycling.

The use of halogenated solvents to clean and condition surface metal parts, electronic components, and other non-porous substrates is a well established process. Halogenated solvents like CFC–113 and methyl chloroform are commonly used for cleaning purposes in the electronics and metal cleaning industries. In particular, these solvents are good for organic matter. In addition, they are non-flammable, non-corrosive, have a low heat of vaporization, and provide a boiling temperature range which is optimum for cleaning performance. It is estimated that 200 million pounds of CFC–113 and 413 millions pounds of methyl chloroform were used in solvent cleaning applications in 1988.

Solvent losses in cleaning operations result mainly from evaporation and drag out emissions, and through the disposal of spent solvent "bottoms." Bottoms from degreasers are composed of contaminated solvent that is unsuitable for use because of the buildup of contaminants such as fluxes, oil, grease, metal fines, and dirt. Contaminated solvent bottoms are periodically removed for disposal and can be replaced either by virgin solvent or by recycled solvent. The technology for recycling is well understood and has been practiced in the solvent user industry for a number of years. Solvents can be recycled on-site by users or at off-site commercial recycling facilities. Either approach can dramatically reduce a user's overall solvent consumption and associated costs, including those costs related to waste disposal. It is estimated that solvent use can be reduced up to 40–50 percent via recycling.

On-site recycling is carried out using (1) in situ recovery in defluxers and degreasers, (2) single plate distillation, and/or (3) carbon adsorption to recover solvent loss due to evaporation. Most on-site recycling operations are simple to perform and the users reconstitute the solvent if necessary (e.g., they might replace some stabilizers or inhibitors in the recycled solvent). The bottoms used for on-site recycling are generally sent to off-site recyclers to recover additional solvent or hauled away to authorized disposal facilities. The Agency requests comments on the technical and economic feasibility of on-site recycling.

Carbon adsorption technology has been used by industry to recover solvent loss due to evaporation. This technology has been used effectively to capture and reclaim CFC–113. The use of carbon adsorption to capture and reclaim methyl chloroform is considered technically more difficult. Industry is currently testing alternative methods to improve this recovery process. The Agency requests comments on the technical and economic feasibility of using carbon adsorption to recover methyl chloroform.

Off-site facilities recycle solvent that is generated from degreaser bottoms left over after cleaning operations or from still bottoms with high levels of contamination left over after on-site recycling. Most off-site recycling facilities are operated by commercial recyclers. Some large manufacturers of solvents also provide recycling facilities to their customers either by recycling the solvent in their own facilities or by encouraging their distributors to establish recycling capabilities. The Agency requests comments on the geographical availability and capacity of recycling facilities to meet the demand for recycling generated by a mandatory recycling program.

Solvents recycled off-site are either sent back to the original users that generated the spent solvent or are put back on the market as recycled solvent that is then sold to a wide variety of users. Recycled solvents are generally purified to meet (1) specific customer requirements for recycled solvents that are sent back to original users, or (2) internal standards set by the recycling company to meet general purity requirements (e.g., 98 or 99 percent pure). The Agency seeks comments by users and recyclers of solvents on the need and feasibility of establishing a standard or a set of standards of purity for off-site recycled material that would apply to various end use applications (*e.g.*, solvents used for metal degreasing, electronics cleaning, etc).

Solvent cleaning applications in companies manufacturing equipment for military use constitutes a large portion of solvent use. Current military specifications set standards for solvent use. These standards require high purity levels that in some instances cannot be met by recycled solvents. The Agency requests comments on this requirement and on the technical issue of the feasibility of using recycled solvents for equipment manufactured for military applications.

The storage and shipping of spent CFC–113 and methyl chloroform solvent is currently classified under the Resource Conservation and Recovery Act of 1976 (RCRA) and the Department of Transportation (DOT) guidelines as hazardous waste. These regulations require special procedures for the storage, handling, and shipping of spent solvent. The Agency requests comments on this classification and its effect on recycling operations.

The Agency welcomes additional comments on other issues that might be relevant to solvent recycling; for example, the efficacy of solvent recycling technology, the relative advantages of on-site recycling versus off-site recycling, the availability of the infra-structure to meet the nationwide demand for recycling once it becomes mandatory, the costs of recycling, and the impact of mandatory recycling on small solvent users.

The Agency would like to encourage solvent recycling to the maximum extent possible, because it is a technically and economically feasible way to reduce solvent emissions significantly and, therefore, would contribute to ozone layer protection. The Agency is aware of existing barriers in the marketplace to the use of recycled material. These include military specifications which prohibit the use of recycled materials, the insistence on virgin specifications by users because of the wide variation in the quality of available recycled material, and other barriers which constrain the use of recycled material. In lieu of a mandatory recycling program, the Agency is considering the formation of an ad hoc working group of commercial and military equipment manufacturers, solvent producers, representatives of the Department of Defense, and industry experts, to identify the major barriers to increased use of recycled solvent and to develop procedures to eliminate these barriers. The Agency requests comments on the relative costs and effectiveness of this alternative to a mandatory recycling program.

F. Sterilization

Sterilization accounts for 5.1% of CFCs used in the United States. The Agency is currently investigating the impact that a recycling program, either "market-oriented" (deposit/refund program) or mandatory (direct regulations), would have on the sterilant sector.

Systems are available to recycle CFC–12 used in sterilization processes using the "12/88" mixture, a combination of CFC–12 and ethylene oxide (ETO). The

"12/88" mixture can be compressed and cooled back to a liquid state after being used as a gas. One newly developed technology is a system than can recover 99.9% of the ETO and 85% of the CFC–12 used in the sterilization process. The ETO is converted to ethylene glycol, and the CFC–12 can be resold for reblending and reuse with ETO. This technology offers a potentially cost-effective recycling option. In addition, the recovered ethylene glycol solution can be treated and used as an anti-freezing agent, or in other applications that do not require pure ethylene glycol. It can also be pretreated and directly discharged to sewers. The advantage here is that the recycling system can also be retooled to recycle new chemical substitutes (HCFC–HFC blends) that are currently being developed as alternations to CFC. All recovery systems, however, will require the use of pure ethylene oxide to replenish the mixture back to "12/88" since some of the ethylene oxide is consumed in the sterilization process. The use of pure ethylene oxide requires stringent safety precautions.

Cryogenic systems can be used for "12/88" systems as well as for pure ethylene oxide and "10/90" sterilization systems. They are currently used by some medical device manufacturers in Europe. Almost all CFC and ethylene oxide can be reclaimed, if a cryogenic system is used. This process works at −100 °C (−122 °F), by using liquid nitrogen.

There are additional process alternatives that can be used as well to reduce the use of 12/88, such as radiation, and sterilization, and contract recycling.

The Agency requests comments on the environmental, technical and economic feasibility of requiring add-on engineering controls, such as recycling equipment in sterilization processes.

G. Recycling From Other CFC Use Sectors

If the Agency were to adopt mandatory recycling, rather than a deposit/refund system, it is likely the Agency would concentrate on requiring CFC capture, recycling and reclamation from mobile air-conditioning, stationary refrigeration and air-conditioning systems, refrigerated transport, home appliances, solvents applications, sterilants and halon systems (See, section H below). Recycling in these use sectors appears most desirable based on technical, economic criteria and market trends.

In other use sectors, however, recycling may be costly and/or inefficient. The Agency is considering not including these areas in a recycling program and requests comments on this approach.

Foam Blowing

CFCs in foam products are released to the atmosphere at different rates depending upon the type of foam and the molecular weight of the blowing agent. For most open cell foams a large portion of the CFCs are released during the manufacturing process. In contrast, closed cell foams retain most of their CFCs during the manufacturing process but release them gradually over the life of the product and when the product is disposed.

Flexible Foam

Flexible slabstock polyurethane foam has an open cell structure and release of the CFC–11 blowing agent from the foam is relatively prompt. Emissions of CFC–11 occur throughout the production process, with the largest amount released approximately midway through the foam tunnel, near the "blow off" point where most of the foam rise occurs. Significant releases also occur when the plastic sheeting is stripped from the sides of the bunstock and when the foam is cut into segments. Significant emissions can also occur from the bunstock during curing. Some estimates indicate that this source accounts for about half the CFC–11 blowing agent emissions, while the other half is released in the initial foaming process.

Carbon adsorption provides a technical means by which CFC–11 can be recovered from the foam process exhaust streams. CFC–11 can be readily adsorbed onto activated carbon and can easily be desorbed.

In one full scale, conventional slabstock plant in Europe, a recovery rate of approximately 40 percent was achieved using carbon adsorption. Higher recovery rates may be achievable by including the curing area in the recovery process. Examples of recovery technologies which enclose the curing area include Hypercure and E-Max. This process design permits higher CFC recovery rates than are currently possible in conventional pouring and curing operations.

Technical issues that would affect the cost and efficiency of carbon adsorption include fouling of the carbon bed by organic impurities, the effect of water vapor on bed capacity, waste water disposal problems, and the purity of the reclaimed CFC–11. Capital costs for carbon adsorption can be substantial and are highly plant specific. Costs depend on the daily plant operating cycle and volume of exhaust air that must be treated, which in turn may not be practical if on-site purification is excessively complex or costly. Experience from both full scale carbon adsorption units and pilot scale units show that the purity of CFC–11 is suitable for foam blowing and purification may be unnecessary.

The main factor affecting the outlook for use of carbon adsorption technology is economics. To be economically efficient, a carbon adsorption system must return a quantity of CFC–11 that is sufficient to offset the annualized operating costs of the system. The amount of CFC–11 that is potentially recoverable is a function of total emissions and efficiency of the exhaust system (*i.e.*, percent of total emissions captured) in a particular plant. Neither equipment costs nor expected recovery rates can be generalized, but these factors determine the economic viability of the technology.

To date, only a few foam manufacturing plants around the world have carbon adsorption recovery units. The use of carbon absorption to capture CFC emissions from the manufacturing process requires a substantial capital investment and in some plants it may be difficult to justify given the uncertain payback period. The cost-effectiveness of carbon adsorption, the issue of carbon beds contaminated with isocyanate or other by-products, and the regeneration of the carbon beds are still being evaluated. Moreover, many firms in the flexible foam industry expect to eliminate their use of CFCs within the next 3–5 years, either through the use of water-based foam or through other substitutes. As a result, requiring recycling would have very limited impact on CFC reductions.

The Agency is requesting comments on the environmental, technical and economic feasibility of capturing CFC–11 from the flexible foam manufacturing process.

Rigid Insulating Foams

The foam insulation properties, chemical and manufacturing processes and CFC blowing agent differ for polyurethane, polyisocyanurate, phenolic and extruded polystyrene foams; however, the blowing agent emission patterns are quite similar.

It is estimated that between 5 and 15 percent of the CFCs used in the manufacture of rigid insulating foams are emitted at the time of manufacture. Eighty-five to 95 percent of the CFC blowing agent is captured in the foam and released slowly over the life of the foam product and upon disposal of

appliances, building materials and refrigerated transport equipment.

Carbon absorption recovery equipment will capture CFC blowing agents during manufacture, but this technology is not expected to have very high efficiency rates, and is not considered cost-effective based on the potential amount of CFCs it could capture.

The Agency requests comments on the environmental, technical and economical feasibility of capture and recycle of CFCs during the manufacture of rigid foam insulation.

Most of the CFC blowing agent used in the manufacture of rigid foam is banked in the product, and released over its lifetime and at disposal. Because of the difficulty in removing insulation from buildings prior to destruction or renovation, and lack of knowledge of cost-effective technologies which could recover CFCs from foam insulation, the Agency is not considering requiring CFC capture at disposal at this time. As with flexible foam, many firms are expected to eliminate their use of CFCs in light foams within the next 3 to 5 years. As a result, requiring recycling would have very limited impact on CFC emissions.

H. Halons

Halons are fully-halogenated compounds that are effective fire extinguishing chemicals. They are electrically non-conductive, dissipate quickly, leave no residue, are explosion suppressants, and are non-toxic. This combination of characteristics has led to their selection as the fire extinguishing agent of choice for many fire protection situations including computer, telecommunications, and electronic equipment facilities, museums, engine spaces on ships and aircraft, ground protection of aircraft, explosion suppression in oil exploration, general office fire protection and industrial applications. Recently, portable fire extinguishers using halons have achieved some popularity in home use.

There are three primary halons in use today for fire extinguishing: Halon 1211, halon 1301, and halon 2402. Halon 1211 has a boiling point of -3.4 °C and a vapor pressure of approximately 2.5 Bars at 20 °C. It is discharged as a liquid stream. Halon 1211 is thus best suited for use in portable extinguishers, by large capacity handling equipment and in local application fire protection systems.

Halon 1301 has a boiling point of -57.8 °C and a vapor pressure of approximately 15 Bars at 20 °C. As a result, it can be rapidly discharged and dispersed throughout the air to create an extinguishing concentration throughout the room. Halon 1301 is thus best suited for use in total flooding fire protection systems.

Halon 2402 is not widely used in the United States because it is more toxic than either halon 1211 or 1301. Halon 2402 has a boiling point of 47.3 °C. It can be discharged in the form of a liquid stream and is therefore best suited for use as a manually applied fire extinguishant in portable fire extinguishers or in hand hose line equipment.

A majority of halon that has been produced has been deployed in various fire protection equipment awaiting use in extinguishing a fire. This volume of halon constitutes the "halon bank." The quantities of halons banked in extinguishing system containers, portable extinguishers, and mobile units is far greater than the quantities emitted each year for extinguishing fires, discharge testing, training and in unwanted discharges. Currently, approximately 70 percent of halon 1301 and 80 percent of halon 1211 produced is stored in cylinders or containers installed on end-user premises.

In the Montreal Protocol's technology assessment report by the Halons Technical Options Committee, the committee recommends managing this bank at a national level for several reasons, including "to recover the highest possible quantities for recycling and reuse in new systems for critical applications; to eliminate controllable emissions associated with periodic maintenance of pressure vessels or dismantling of installations; etc." This ANPRM is seeking to address the components of "bank" management associated with recovery, recycling and reuse of banked halon. The Agency is investigating several options to encourage recycling of halon. The first option is the deposit/refund system described in this ANPRM. In addition, EPA could develop a mandatory recycle program. Finally, EPA is considering, a voluntary program, working with the industry to help set standards to facilitate recycling. The remainder of this ANPRM discusses whether a mandatory or a voluntary recycling program is appropriate for the halon user sector.

Halon 1211

The technology for transferring and recovering banked halon 1211 has been in use since halon extinguishers were introduced 15 years ago. Current developments focus on improving the simple pressure transfer systems initially used to transfer the halon from a storage container into the extinguisher, and back from the extinguisher into a recovery container when a maintenance procedure is required. Efficiency of the pressure transfer system runs between 90 and 96 percent depending on the training and experience of the individual.

Improvement in the efficiency of the pressure transfer system is possible through the use of a refrigerated system. The refrigerated recovery system employs a refrigerated receiver for the condensation and collection of the halon 1211 and the nitrogen gas. In the refrigerated system no pump is used. The pressure in the cold tank is maintained at atmospheric pressure. All vented halon gas, from both the vented extinguishers and the recovery containers, is directed through the refrigerated tank. The efficiency of the refrigerated system is 99 to 99.2 percent.

While the refrigerated system appears to be a major step towards recovering the halon, it does not recover 100 percent of the chemical. A third technology which pumps the halon between two containers further improves recovery efficiency. With a pump, liquid halon can be transferred between containers without the need to vent the pressure from the receiving container. Refinement of the pumping system is in progress. The pumping system has the capability of evacuating everything from the extinguisher down to a negative pressure. Certain pumping equipment undergoing final testing will also be able to restore halon to near virgin specifications by reducing moisture, filtering out particulate matter, and minimizing other impurities by the use of a molecular sieve. After removing the halon from the extinguisher into a recovery vessel, the pump may be reversed and is able to then transfer the purified halon back from the recovery vessel into the extinguisher. Several pumps are currently available and are currently undergoing further testing by several companies.

In 1984, the Fire Equipment Manufacturers Association (FEMA), and the National Association of Fire Equipment Distributors (NAFED), held regional conferences at which they demonstrated the economic benefits of conserving halon during servicing and recharging. The National Fire Protection Association (NFPA) consensus standard for portable fire extinguishers, NFPA-10, is premised on the fact that halon 1211 recovery, recycle and reuse is technically feasible and desirable. The 1988 edition of NFPA-10 contains the following paragraph on re-use:

Halon agent removed from an extinguisher at the time of maintenance or recharging shall be placed in a separate recovery cylinder and

the extinguisher cylinder examined internally for contamination. The halon agent, retained in the recovery cylinder, may be reused only if no evidence of internal contamination is observed in the extinguisher cylinder. Halon removed from extinguishers that exhibit evidence of internal contamination or corrosion shall be processed in accordance with the extinguisher manufacturer's instructions.

Thus recovery of halon 1211 is already required by the NFPA–10 Standard.

The NFPA–10 Standard is due to be revised in May, 1990. Certain revisions, pertinent to halon 1211 recovery and recycling (which currently appear to be generally acceptable) include a requirement for a closed recovery system. This system would provide for the transfer of halon between extinguishers, supply containers, and the recharge and recovery containers without permitting any of the halon to escape to the atmosphere.

In addition, the revisions may include a requirement that the system supply or recharge and recovery container shall be capable of maintaining the halon in a sealed environment until it is reused or returned to the agent manufacturer. Another provision may require that the closed recovery/charging systems also include plumbing, valves, regulators, and safety relief devices to permit convenient rapid transfer of halon 1211.

A leading halon equipment manufacturer has already established a commercial recycling program for halon 1211 which will pay $1/lb. for halon 1211 that can be purified and reused.

In view of the technical sophistication already present in halon 1211 recovery and the progress being made through its voluntary standard setting organization, EPA is requesting comments from industry on the technical and economic feasibility of requiring 99% recovery of halon 1211 during cylinder maintenance, recharging or tear-down by January 1, 1991.

Halon 1301

The NFPA voluntary consensus standard for Halon 1301 Fire Extinguishing Systems (NFPA–12a) is premised on the fact that halon 1301 recovery, and recycle and reuse is technically feasible and desirable. The 1989 edition of NFPA–12a, under section 1–11.1 Inspection and Tests, contains the requirements that "all halon removed from refillable containers during service or maintenance procedures shall be collected and recycled * * *" and "all factory-charged nonrefillable containers removed from useful service shall be returned for recycling of the agent."

EPA recognizes, however, that the equipment commonly used to recover halon 1301 does not currently permit recovery to the level possible with halon 1211. The Agency also recognizes that the type of storage tank used to hold banked halon directly affects the level of recovery possible with current equipment.

Two basic types of halon 1301 storage tanks exist. The first type is a spherical cylinder which is hung from the wall or ceiling. The second type is a tank which sits on the floor and is bolted to the wall. This second type of tank has two possible types of siphon tubes—those which are bolted on and those which are threaded and screwed on. The type of siphon tube used also affects the level of recovery possible with standard equipment.

Currently, over 99% of the halon 1301 in the elevated spherical tanks can be recovered via standard pressure transfer, but pressure transfer can recover only 50% of the halon 1301 contained in floor tanks. With the use of a pump, a further 30–35 percent of the liquid halon can be recovered from floor tanks with threaded siphon tubes. However, this method of recovery from floor tanks with bolted siphon tubes is more difficult, because the bolted siphon tube is not air-tight and air leakage frequently locks-up the pump. The Agency is aware, of new equipment that has recently been developed that recovers virtually all of the halon 1301 from storage tanks with bolted siphon tubes. EPA is thus requesting comments from industry on the feasibility of 99% recovery of halon 1301 by January 1, 1992.

Compliance

As discussed above, EPA is interested in working with NFPA and other standard writing and certifying organizations to develop and implement high efficiency, high recovery, cost-effective recycling equipment and programs. At a later date, the Agency could then mandate industry adherence to these recycling standards, if direct regulations are deemed appropriate. The Agency believes that efficient halon recovery is likely to be profitable. EPA believes that working with industry organizations would permit the development of the best possible recycling program and requests comments on this approach.

In addition, the Agency is considering working with organizations certifying equipment and training workers to install and maintain halon fire extinguishers and systems. For example, U.L. certification requirements could be extended to include recycling procedures. At a later date, the Agency could mandate that all organizations involved in distribution and installation of halon have workers certified for recycling. EPA requests comments on the technical and economic feasibility of 99% recovery of both halon 1211 and 1301 during maintenance, alterations, and tear-down.

In developing regulations for recycling, if they are eventually needed, the Agency requests comments on the size and type of the company typically responsible for maintenance and recovery, and the typical size of distributing companies responsible for servicing and maintaining halon 1211 extinguishers and halon 1301 systems.

In order to ensure compliance with recapture and recycling of halons, the Agency is considering the requirement that all companies involved in the sale to, or recovery from, end-users of halons own recovery equipment capable of recovering 99% of the halon contained in the halon 1211 extinguisher or in the halon 1301 storage tank.

Due to the difference in current availability of equipment capable of recovering over 99% of the halon 1211 and halon 1301, the Agency is considering a regulation that would initially require the ownership of equipment capable of a higher level of recovery for halon 1211 than for halon 1301. Later, an equally stringent requirement for halon 1301 recovery would be phased-in. This would permit the commercialization of halon 1301 equipment capable of 99% recovery before this level of recovery was mandated.

In addition, the Agency is considering prohibiting the sale of either halon 1211 or halon 1301 to companies, as part of a direct regulatory program, which do not possess adequate recycling equipment or have an established contract with an off- site recycler for reclaiming halon 1301 from storage tanks. The Agency requests comments on whether this requirement would assist in the compliance with a recycling program.

The Agency is also considering a regulation, as part of a mandatory program, requiring that all companies selling and/or maintaining halon 1211 extinguishers or installing and/or maintaining halon 1301 systems maintain a log of the quantity of halon they have sold and recovered.

To ensure compliance with these requirements, the Agency could rely in part on unannounced inspections where the inspectors verified the presence and use of recovery equipment as part of a standard maintenance procedure, as well as checking logs of recycling activities. The Agency requests comments on this and other possibly

appropriate methods of ensuring compliance with a recycling regulation.

VIII. Recycling HCFCs

Hydrochlorofluorocarbons (HCFCs), hydrofluorocarbons (HFCs), terpene solvent cleaners, aqueous solvent cleaners and other chemicals have been identified as alternatives to fully halogenated CFCs. Some HCFCs and HFCs are currently available on the market, others are soon expected to become commercially available.

The Agency is evaluating the possibility of including certain chemical substitutes for CFCs in refrigeration, air conditioning, solvent, fire suppression, and other use-sectors under a national recycling program. The Agency requests comment on the environmental benefit with respect to the protection of stratospheric ozone, cost impact, technical feasibility and other issues associated with a nationwide program, including whether there is a need for unilateral or multilateral action through the Protocol to recycle these chemicals to protect stratospheric ozone.

EPA analysis indicates that while the use of HCFCs is necessary for a timely and smooth transition away from CFCs, they must be used prudently. HCFCs typically have ozone depletion potentials much lower than fully halogenated CFCs. However, if the growth in the rate of use of these compounds is high and continues unabated, total chlorine concentrations in the atmosphere cannot be reduced to the levels they were prior to the onset of the Antarctic Ozone hole.

Assuming a phaseout of CFCs by 2000, the Agency estimates that HCFCs could contribute from 0.04 ppb to atmospheric chlorine levels by 2075 (under a scenario of the prudent use of HCFCs which relies heavily on recycling of HCFCs, to 1.37 ppb of stratospheric chlorine under an extreme case of HCFC use where no recycling occurs). The analysis concludes that recycling HCFCs and using HCFCs with low ozone depleting potentials in high emission use areas could reduce chlorine concentrations by significant amounts and is an essential element of any program to allow for the use of HCFCs to replace CFCs.

In addition to the environmental considerations discussed above, the Agency is considering including HCFCs in the national recycling program based on legislative activity at the state level. Many states have proposed legislation and/or regulations which would require recycling of HCFCs and other CFC alternatives. California has proposed a state initiative which includes measures for Stratospheric Ozone Protection. One proposed section requires that "maximum feasible recovery and recycling * * * shall be conducted during the servicing or disposal of any air conditioning and refrigeration system and appliance, including vehicular air-conditioners, and during the disposal of building and appliance insulation." This requirement covers HCFCs and any other chemical determined by the Air Resources Control Board to have the potential to deplete stratospheric ozone. This requirement is to be met no later than January 1, 1995.

In the short term, the focus of a recycling program would be on recycling CFCs. As other compounds that are less ozone-depleting are substituted for CFCs, however, the Agency will maintain the goal of protecting the stratospheric ozone layer through minimizing emissions of such compounds. To this end, as new compounds come into use, the Agency is considering broadening any recycling program to encompass procedures and techniques specific to recycling of HCFCs and other compounds known to deplete the ozone layer. The Agency requests comments on including HCFCs in a recycling program.

Dated: April 23, 1990.

William K. Reilly,

Administrator

Appendix A

Definitions

The following definitions on reclaim, recovery, and recycle were taken from ASHRAE Proposed Guideline GPC-3P, Guideline for Reducing Emission of Fully Halogenated Chlorofluorocarbon (CFC) Refrigerants in Refrigeration and Air-Conditioning Equipment and Applications, June 1989. The Agency requests comments on the use of these definitions in the development of regulations pertaining to the recovery, recycle and reclamation of controlled substances.

Reclaim: To process refrigerant to new conditions, by means which may include distillation. May require chemical analysis of the contaminated refrigerant to determine that appropriate process specifications are met. This term usually implies the use of processes or procedures available only at a reprocessing or manufacturing facility.

Recovery: To remove refrigerant in any condition from a system and store it in an external container without necessarily testing or processing it in any way.

Recycle: To clean refrigerant for reuse by oil separation and single or multiple passes, through moisture absorption devices, such as replaceable core filter-driers. This term usually implies procedures implemented at the field job site or at a local service shop.

References

Air-Conditioning & Refrigeration Institute "1988 Standard for Specifications for Fluorocarbon Refrigerant" (Arlington, VA: 1988).

Alliance for Responsible CFC Policy, petition mailed to the Administrator of the Environmental Protection Agency (September 28, 1989).

American Society of Heating, Refrigeration and Air-Conditioning Engineers, Inc. "Proposed American National Standard: Guideline for Reducing Emission of Fully Halogenated Chlorofluorocarbon (CFC) Refrigerants in Refrigeration and Air-Conditioning Equipment and Applications" (Atlanta, GA: June, 1989).

"Analysis of the Environmental Implications of Future Growth in Demand for Partially-Halogenated Chlorinated Compounds" Office of Air and Radiation, U.S. Environmental Protection Agency Peer Review Draft (July 24, 1989).

Aucott, Michael "Quantity of Refrigerant in Junked Automobiles" (Trenton, NJ: New Jersey Department of Environmental Protection, 1989).

"Certain Fluorocarbons (Chlorofluorocarbons) in Food, Food Additive, Drug, Animal Food, Animal Drug, Cosmetic and Medical Device Products as Propellants in Self-Pressurized Containers: Prohibition on Use" Federal Register (March 17, 1989) pp.11301–11326.

"Costs and Benefits of Phasing Out Production of CFCs and Halons in the United States" Office of Air and Radiation, U.S. Environmental Protection Agency Review Draft (November 3, 1989).

"Future Concentrations of Stratospheric Chlorine and Bromine" Office of Air and Radiation, U.S. Environmental Protection Agency (August, 1988).

"Help Protect the Ozone Layer: Recycle the Refrigerant in Your Car's Air Conditioner" Office of Air and Radiation, U.S. Environmental Protection Agency (September, 1989).

Helsinki Declaration on the Protection of the Ozone Layer (United Nations Environmental Programme, 1989).

"Refrigerant Recycling in Mobile Air Conditioners: Guide for Professionals" Office of Air and Radiation, U.S. Environmental Protection Agency (September, 1989).

Society for Automotive Engineering, "J1989: Recommended Service Procedure for Containment of R–12" (October, 1989).

Society for Automotive Engineering, "J1990: Extraction and Recycle Equipment for Mobile Automotive Air-Conditioning Systems" (October, 1989).

Society for Automotive Engineering, "J1991: Standard of Purity for Use in Mobile Air Conditioning Systems" (October, 1989).

State of California Initiative #480 "Natural Environment. Public Health. Bonds. Initiative Statute. (Sacramento, CA: November, 1989)

Technical Committee on Halogenated Fire Extinguishing Systems, NFPA 12A Halon 1301 Fire Extinguishing Systems 1989 Edition (National Fire Protection Association, 1989).

Technical Committee on Portable Fire Extinguishers, NFPA 10 Portable Fire

Extinguishers 1988 Edition (National Fire Protection Association, 1988).
The Montreal Protocol on Substances that Deplete the Ozone Layer (United Nations Environmental Programme, 1987).
Underwriters Laboratories, Inc. "Standard for Safety UL 1963: Refrigerant Recovery/Recycling Equipment" (Research Triangle Park, NC: October, 1989).
The Vienna Convention for the Protection of the Ozone Layer (United Nations Environmental Programme, 1985).
Weitzman, Leo "Evaluation of Refrigerant from Mobile Air Conditioners" (Research Triangle Park, NC: Acurex Corporation, 1989).

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BILLING CODE 6560-50-M

federal register

Tuesday
May 1, 1990

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three proposed rescissions totalling $226,883,000.

The proposed rescissions affect programs of the Departments of Agriculture and Commerce.

The details of the proposed rescissions are contained in the attached report.

Dated: April 23, 1990.

George Bush,

The White House.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Agriculture:	
	Agricultural Research Service	
R90–1	Buildings and facilities	4,075
	Cooperative State Research Service	
R90–2	Buildings and facilities	41,008
	Department of Commerce:	
	Economic Development Administration	
R90–3	Economic development assistance programs	181,800
	Total, Proposed Rescissions	226,883

SUMMARY OF SPECIAL MESSAGES
FOR FY 1990
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fifth special message:		
New items.....	226,883	---
Revisions to previous special messages..	---	---
Effect of fifth special message.....	226,883	---
Amounts from previous special messages ...	---	10,662,589
Total amount proposed to date in all special messages.....	226,883	10,662,589

Rescission Proposal No. R90-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 10,675,000 (P.L. 101-161)
BUREAU: Agricultural Research Service	Other budgetary resources..... 23,532,417
Appropriation title and symbol: Buildings and facilities 12X1401	Total budgetary resources..... 34,207,417
	Amount proposed for rescission..... $ 4,075,000
OMB identification code: 12-1401-0-1-352	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year ___ _____ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation provides for the acquisition of land, construction, repair, improvement, extension, alteration and purchase of fixed equipment or facilities of or used by the Agricultural Research Service. The funds are proposed to be rescinded to offset the increased outlays of the Federal Crop Insurance Corporation related to a proposed supplemental.

Estimated Program Effect: Certain construction projects that would have been funded in 1990 would be delayed until later years or cancelled.

Outlay Effect (in thousands of dollars):

1990 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
20,000	18,669	-1,331	-2,038	-706	---	---	---

R90-1

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Buildings and facilities

Of the funds made available under this head in Public Law 101-161, $4,075,000 are rescinded.

Rescission Proposal No. R90-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority..... $ 45,108,000 (P.L. 101-161)
BUREAU: Cooperative State Research Service	Other budgetary resources..... ___
Appropriation title and symbol: Buildings and facilities 12X1501	Total budgetary resources..... 45,108,000
	Amount proposed for rescission..... $ 41,008,000
OMB identification code: 12-1500-0-1-352	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other ___
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multi-year ___ ___ (expiration date) ☒ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ___

Justification: This appropriation provides for the acquisition of land, construction, repair, improvement, extension, alteration and purchase of fixed equipment or facilities and grants to States and other eligible recipients as necessary carry out the agricultural research, extension and teaching programs of the Department of Agriculture. The funds are proposed to be rescinded to offset the increased outlays of the Federal Crop Insurance Corporation related to a proposed supplemental.

Estimated Program Effect: Certain construction projects that would have been funded in 1990 would be delayed until later years or cancelled.

Outlay Effect (in thousands of dollars):

1990 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
4,111	510	-4,101	-12,302	-12,302	-8,202	-4,101	---

R90-2

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Buildings and facilities

Of the funds made available under this head in Public Law 101-161, $41,008,000 are rescinded.

R90-3

DEPARTMENT OF COMMERCE

Economic Development Administration

Economic development assistance programs

Of the funds made available under this head in Public Law 101-162, $170,000,000 are rescinded; and in addition, available balances appropriated by Public Law 99-190, Public Law 99-500 and Public Law 99-591 for the Fort Worth Stockyards project are rescinded.

Rescission Proposal No. R90-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Commerce	New budget authority..... $ 188,556,000 (P.L. 101-162) Other budgetary resources..... 500,000 Total budgetary resources..... 189,056,000
BUREAU: Economic Development Administration	
Appropriation title and symbol: Economic development assistance programs 1302050	Amount proposed for rescission..... $ 181,800,000
OMB identification code: 13-2050-0-1-452	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other _____
Grant program: ☒ Yes ☐ No	
Type of account or fund: ☒ Annual ☐ Multi-year ___ _____ (expiration date) ☐ No-Year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: This appropriation provides public works grants and business guaranteed loans to assist economically distressed areas deal with problems of economic adjustment. EDA also provides grants for economic development planning and technical assistance and supports evaluation and research activities aimed at increasing public understanding of the process of economic growth and development. The programs have not proven to be effective and the funds are proposed for rescission to offset the increased outlays of the Bureau of the Census related to a proposed supplemental.

Estimated Program Effect: No additional economic development assistance grants would be made in 1990.

Outlay Effect (in thousands of dollars):

1990 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995
183,893	165,713	-18,180	-56,358	-56,358	-34,542	-12,726	-3,636

[FR Doc. 90-10011 Filed 4-30-90; 8:45 am]
BILLING CODE 3110-01-C

federal register

Tuesday
May 1, 1990

Part V

Department of Transportation

Research and Special Programs Administration

City of Watertown, NY; Application for Inconsistency Ruling Concerning Its Ordinances and a State of New York Statute; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-50]

City of Watertown, NY; Application for Inconsistency Ruling Concerning Its Ordinances and a State of New York Statute

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The City of Watertown, New York, has applied for an administrative ruling determining whether certain of its ordinances concerning tank trucks used to transport flammable liquids and concerning bulk deliveries of flammable and combustible liquids are inconsistent with the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) issued thereunder and, therefore, are preempted under section 112(a) of the HMTA. Resolution of those issues may require similar determinations concerning a State of New York statute regulating the transportation of hazardous materials.

DATES: Comments received on or before June 25, 1990, and rebuttal comments received on or before August 13, 1990, will be considered before an administrative ruling is issued by the Director of the Office of Hazardous Materials Transportation (OHMT). Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8419, Nassif Building, 400 Seventh Street SW., Washington, DC 20590–0001. Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (IRA–50). Three copies are requested. A copy of each comment and rebuttal comment must also be sent to Robert P. Bogdan, Esq., Assistant Corporation Counsel, City of Watertown, Room. 200, Municipal Building, 245 Washington Street, Watertown, NY 13601–3380; James P. McClusky, Esq., Jefferson County Assistant Public Defender, 175 Arsenal Street, Watertown, NY 13601; and Robert Abrams, Esq., Attorney General, State of New York, The Capitol, Albany, NY 12224. A certification that a copy has been sent to each person must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Mr. Bogdan, Mr. McClusky, and Mr. Abrams at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Mr. Edward H. Bonekemper III, Senior Attorney, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590, telephone number 202–366–4400.

SUPPLEMENTARY INFORMATION:

1. Background

The HMTA (49 U.S.C. App. 1801–1811), at section 112(a) (49 App. U.S.C. App. 1811(a)), expressly preempts "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement" of the HMTA or the HMR issued thereunder.

Procedural regulations implementing section 112(a) of the HMTA and providing for the issuance of inconsistency rulings are codified at 49 CFR 107.201 through 107.211. An inconsistency ruling is an advisory administrative opinion as to the relationship between a state or political subdivision requirement and a requirement of the HMTA or HMR. Section 107.209(c) sets forth the following factors which are considered in determining whether a state or local requirement is inconsistent:

(1) Whether compliance with both the state or local requirement and the HMTA or HMR is possible (the "dual compliance" test); and

(2) The extent to which the state or local requirement is an obstacle to the accomplishment and execution of the HMTA and the HMR (the "obstacle" test).

Inconsistency rulings do not address the issues of preemption under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its advisory inconsistency rulings ccncerning preemption under the HMTA, OHMT is guided by the principles enunciated in Executive Order No. 12,612 entitled "Federalism" [52 FR 41685, Oct. 30, 1987]. Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains an express preemption provision, which OHMT has implemented through regulations and interpreted in a long series of inconsistency rulings beginning in 1978.

2. The Application for Inconsistency Ruling

On March 19, 1990, the City of Watertown, New York, through its Assistant Corporation Counsel, applied for an inconsistency ruling concerning two of its ordinances: Watertown Code, sections 101–131 (Tank trucks) and 101–134 (Bulk deliveries). Those ordinances are reproduced in appendix A to this Notice.

The City states that the ordinances are used by its Fire Department with respect to fuel oil delivery trucks delivering fuel oil Nos. 1 and 2 to homes and businesses within the City. It contends that these ordinances are consistent with the HMR and thus should not be preempted.

Furthermore, the City submitted with its application a copy of a Watertown City Court decision issued on May 25, 1989, in *City of Watertown* v. *William L. Vrooman.* (A copy of that Court opinion is reproduced in appendix B to this notice.) The City Court held in that case that the two City ordinances which are the subject of the City's application, along with two other City ordinances, were preempted by section 14–f(12) of the Transportation Law of the State of New York.

Section 14–f(12), in part, provides:

* * * all local laws or ordinances, except those of such cities having a population of one million or more, regulating the transportation of flammable liquids in trucks, trailers or semi-trailers, are hereby superseded and without force and hereafter no such local law or ordinance shall be adopted to regulate or control the equipment or means of transporting flammable liquids in trucks, trailers or semi-trailers.

(Section 14–f is reproduced in its entirety as appendix C to this notice.)

Because the consistency of the above-described City ordinances is related to the consistency of section 14–f of the Transportation Law of the State of New York, OHMT is broadening this proceeding to include the issue of the consistency of section l4–f with the HMTA and the HMR. This action is being taken pursuant to 49 CFR 107.209(b).

3. Public Comment

Comments should be limited to the issue of whether the cited City of Watertown ordinances and the cited New York State statute are consistent or inconsistent with the HMTA and the HMR. Comments should specifically address the "dual compliance" and

"obstacle" tests described in the "Background" section.

Persons intending to comment on the application should examine the complete application in the RSPA Dockets Unit, and the procedures governing the Department's consideration of applications for inconsistency rulings found at 49 CFR 107.201–107.211.

Issued in Washington, DC, on April 24, 1990.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

Appendix A—City of Watertown Code

Section 101–131 Tank trucks.

A. It shall be unlawful to transport any flammable liquid on a vehicle without first having obtained from the Chief of the Bureau of Fire Prevention a permit therefor. Application for the permit shall be on a form provided by the Bureau of Fire Prevention, stating the maximum capacity and class of liquid to be transported and such other information as is required by the Bureau of Fire Prevention. The permit shall be posted in an approved and protected location adjacent to the driver's seat. The permit shall not be transferable from one vehicle to another.

B. It shall be unlawful to use any vehicle for the transportation of a flammable liquid not in the class of liquids authorized by the license.

C. Tanks shall be constructed of open-hearth or blue-annealed steel, or other suitable material of a strength equivalent to the following table:

Aggregate capacity (gallons)	Shell (gauge)	Minimum thickness of steel (U.S. standard head)
Up to 600	14	14-gauge if bilged, otherwise 12-gauge.
600 to 1,200	12	12-gauge if bilged, otherwise 10-gauge.
Over 1,200	10	8-gauge.

D. Tanks exceeding one thousand two hundred (1,200) gallons in capacity may be constructed with 12-gauge shells and 10-gauge heads, provided that they are subdivided into compartments of six hundred (600) gallons or less and are mounted on a chassis equipped with low-pressure balloon tires.

E. Shell and head joints shall be welded, riveted and welded, brazed or riveted and brazed, riveted and caulked or made tight by some equally satisfactory process.

F. Each compartment of the completed tank shall be tested and proven tight at five (5) pounds minimum pressure. Fill openings shall be four (4) inches minimum diameter.

G. Tanks in excess of six hundred (600) gallons' capacity shall be subdivided into compartments, none of which shall exceed six hundred (600) gallons' capacity.

H. Each tank compartment shall be provided with a suitable operating vent and, in addition thereto, venting facilities of such size and capacity as will prevent rupture of the tank from such internal pressures as may be created by exposure fires.

I. All draw-off valves or faucets shall have the discharge end threaded or otherwise so designed as to permit a tight connection with the hose extending to the fill pipe.

J. Every tank truck shall be provided with properly attached rear steel bumpers. The rear bumpers or chassis extension shall be so arranged as to adequately protect the draw-off valve or faucets in case of collision. Each compartment of a gravity-discharge tank truck shall be equipped with a reliable and efficient shutoff valve located inside the shell of the tank in the compartment outlet, and, except during delivery operations, such valves shall be automatically kept closed or shall be so interlocked with the delivery operation that it will be mechanically closed when delivery operations are completed.

K. The opening mechanism for such valves shall be provided with a secondary control, remote from the tank-filling parts and discharge faucets for use in event of accidents or fire during delivery operations, and such control mechanism shall be provided with a fusible point which will cause valves to close automatically in case of fire.

L. In every case there shall be provided between the shutoff valve seat and discharge faucet a shear section which will break under strain and leave the shutoff seat intact.

M. Tanks, chassis, axles and springs shall be metallically connected. Tank trucks shall be equipped with drag chains long enough to reach the ground.

N. Spare links for drag chains shall be carried in the tool box and the driver held responsible for keeping the same in working order.

O. During the filling operation, metallic contact shall be maintained between the fill pipe and the tank truck.

P. The foregoing provisions shall also apply to the construction and operation of trailers and semitrailers. All trailers shall be firmly and securely attached to the towing vehicle by means of suitable drawbars, supplemented by safety chains.

Q. Every trailer shall be equipped with a reliable system of brakes with reliable provisions for operation from the driver's seat of the vehicle drawing it.

R. Each trailer shall be provided with sidelights and a taillight.

S. Every tank truck and trailer shall be equipped with at least one (1) approved hand fire extinguisher of a type suitable for extinguishing oil fires. Each extinguisher shall be kept in good condition and located in a readily accessible place.

T. Each truck or trailer shall be in good repair and each tank clean and free from leaks. Each vehicle shall be equipped with rubber tires.

U. Each vehicle shall have a competent driver who shall stay at the vehicle or delivery hose attached thereto while the tank is being filled or discharged.

V. No motor on a tank truck shall be permitted to run during the making or breaking of hose connections. If loading or unloading is done without the use of a power pump on the vehicle, no motor on said vehicle shall be allowed to run during such operation.

W. No gasoline hose shall cross a sidewalk while gasoline is being delivered.

X. Smoking by the truck driver or his helper shall not be permitted while they are making deliveries, filling tank trucks or making repairs to trucks.

Section 101–134 Bulk Deliveries.

A. *Intent.* It is the intent of this section to regulate bulk deliveries of the product to gasoline service stations and other large underground storage facilities with a dry disconnect coupling to prevent product spillage when using gravity unloadings.

B. The City of Watertown adopts the NFPA Standard No. 385, Labelled Flammable and Combustible Liquid Tank Vehicles.

C. All tank vehicles, whether the unit is straight or semi, shall, without exception, be inspected annually by the Fire Department of the City of Watertown; and further, if such inspections are not completed by the owners and/or operators of such vehicles, then the delivery of flammable and combustible liquids in said vehicle will be denied.

D. Fire extinguishers shall comply with section 52–5210 and 5220 of NFPA Standard No. 385 and shall be inspected annually by the Fire Department of the City of Watertown and shall accompany the delivery vehicle.

E. The driver of the delivery vehicle shall not smoke during any stage of the delivery process.

F. The driver shall not leave the delivery vehicle unattended at any time while said vehicle is in the process of unloading the product.

G. All motors which are not used for the actual unloading of the product will be shut off during the unloading process.

H. Any deliveries to underground tanks, within the intent of this section, shall be made by means of a tight locked connection at the tanker and at the fill hose and a tight locked connection between the fill hose and the fill pipe. The fill pipe will be firmly attached and locked to the underground tank. The purpose of this requirement is to trap the produce in the tank and the fill pipe and to not allow any overflow at the underground tank. Under no condition will the product be placed in the underground tank unless this procedure is followed.

I. The Fire Department of the City of Watertown shall be the city department empowered to enforce the above detailed regulations and is hereby authorized to implement the necessary enforcement program.

[101–131, 101–134, 101–134, 101–131]

Appendix B—Decision

State of New York, County of Jefferson
City of Watertown, City Court

City of Watertown, Plaintiff, against William L. Vrooman, Respondent, 245 Washington Street, Watertown, New York.

Before: Honorable James C. Harberson, Jr., *City Judge of Watertown.*

Appearances:
Peter S. Blodgett, Esq.,
Corporation Counsel for the City of Watertown, 245 Washington Street, Watertown, New York
David J. Gruenewald, Esq.,
Public Defender for Jefferson County
By: James P. McClusky, Esq.,
Jefferson County Assistant Public Defender, 175 Arsenal Street, Watertown, New York

For: William L. Vrooman,
Avril Warner,
Court Reporter.

The City of Watertown charged William L. Vrooman with a violation of its Municipal Code sections 101–131 Transporting Flammable liquid without a permit, 101–134 Tank Vehicle Uninspected by Fire Department (3/2/89) and a second count of 101–134 and 101–131 on 3/4/89.

The Public Defender's Office moved to dismiss the charges because section 14–F of the New York Transportation law has superceded [sic] the local law.

In 1987 the New York legislature in accordance with the 1975 Federal Hazardous Materials Transportation Act and, in particular, 49 U.S.[C]. section 1811(a) gave the Commissioner of Transportation authority to make rules to regulate transport of hazardous materials:

Further, Transportation law 14–f(1)(a) provides that such rules and regulations shall be no less preventive of public safety than the rules and regulations promulgated by the federal government with respect to the transportation of hazardous waste materials, thereby avoiding preemption by Federal Law.
People v. *Kavanaugh*, 133 Misc2d 689, 507 N.Y.S.2d 952, 954; section 14–f(12) N.Y. Transportation Law.

Naturally the preemption by federal law in this area of national interest is duplicated by the state vis-a-vis the City of Watertown, New York:

* * * all local laws or ordinances * * * regulating the transportation of flammable liquids in trucks, trailers or semitrailers, are hereby superceded [sic] and without force and hereafter no such local law or ordinance shall be adopted to regulate or control the equipment or means of transporting flammable liquids in trucks, trailers or semi-trailers.

N.Y. Transportation Law, section 14–f(12).

Therefore, those sections of the Watertown City Code dealing with the regulations of hazardous material transport have been preempted by section 14–f of the New York Transportation Law.

The City in an amended memorandum of May 3, 1989, states:

The City of Watertown concedes that Transportation Law Section 14–f does regulate the transportation of combustible liquids within the State of New York.

The City maintains, however, section 14–f does not provide the exclusive law in this area.

The City concedes further that based on Federal regulations the home heating oil is included on the Hazardous Materials Table and the defendant was delivering such "combustible liquid." The City admits combustible liquids transport is governed by section 14–f of the Transportation Law and no exception to this preemption is found in the regulations.

The Court finds that Municipal Code sections 101–131, 101–134[,] 101–34, 101–131 violations as charged on March 2, 1989, and March 3, 1989, were preempted by section 14–f of the Transportation Law. The charges are dismissed.

Dated: May 25, 1989.
James C. Harberson, Jr.,
City Judge of Watertown.

Appendix C—New York State Transportation Law

Section 14–f. Transportation of Hazardous Materials

1. The commissioner of transportation is hereby authorized to promote safety in the transportation of hazardous materials by all modes of transportation, and in connection therewith shall:

(a) Have the power to make rules and regulations governing transportation of hazardous materials, which shall mean a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce, by all modes. For purposes of this section, the term "hazardous materials" shall include the following:

(1) *Irritating material* which shall mean a liquid or solid substance which upon contact with fire or when exposed to air gives off dangerous or intensely irritating fumes such as benzylcyanide, chloracetophenone, diphenylaminechlorarsine, and diphenyl chlorarsine, but not including any poisonous material, Class A;

(2) *Poison A* which shall mean those poisonous gases or liquids of such nature that a small amount of the gas, liquid or vapor of the liquid, when in contact with air is dangerous to life. This class includes the following: Bromacetone, cyanogen, cyanogen chloride containing less than 0.9 percent water, diphosgene, ethyldichlorarsine, hydrocyanic acid, methyldichlorarsine, nitrogen peroxide (Tetroxide), phosgene (diphosgene), nitrogen tetroxide—nitric oxide mixtures containing up to 33.2 percent weight nitric oxide;

(3) *Poison B* which shall mean those substances, liquid or solid (including pastes and semi-solids), other than Class A poisons or irritating materials, which are known to be so toxic as to be a hazard to health;

(4) *Corrosive materials* which shall mean those acids, alkaline caustic liquids and other corrosive liquids or solids which when in contact with living tissue, will cause severe damage of such tissue by chemical action; or in the case of leakage, will materially damage or destroy other freight by chemical action; or are liable to cause fire when in contact with organic matter or with certain chemicals that cause visible destruction or irreversible alteration in human skin tissue at the site of contact;

(5) *Oxidizing materials* which shall mean those substances such as a chlorate, permanganate, peroxide, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter;

(6) *Flammable solids* which shall mean any solid material, other than one designated an explosive, as further defined in this section, which under conditions incident to transportation, cause fires through friction, through absorption of moisture, through spontaneous chemical changes, or as a result of retained heat from the manufacturing or processing. Included in this class are spontaneously combustible and water-reactive materials;

(7) *Flammable liquids* which shall mean any liquid, except any liquid meeting the definition of subparagraph nine, ten or eleven of this paragraph, which gives off flammable vapors below a temperature of one hundred degrees Fahrenheit;

(8) *Radioactive materials* which shall mean irradiated nuclear reactor fuel and the waste by-products of reprocessed irradiated nuclear reactor fuel and any other material or combination of materials that spontaneously emits ionizing radiation which the commissioner of transportation determines by regulation to present significant potential threat to public health and safety;

(9) (See, also, subpar. (9) below.) *Liquefied compressed gas* which shall mean a gas liquefied through compression and under charged pressure is partially liquid at a temperature of seventy degrees Fahrenheit;

(9) (See, also, subd. (9) above.) *Regulated medical waste* which shall be defined as provided in subdivision one of section 27–1501 of the environmental conservation law.

(10) (See, also, subpar. (10) below.) *Cryogenic liquid* which shall mean a refrigerated liquefied gas having a boiling point colder than minus one hundred thirty degrees Fahrenheit (minus ninety degrees centigrade) at one atmosphere absolute;

(10) (See, also, subpar. (10) above.) Other identical or similar substances which shall from time to time be identified by the commissioner of transportation by rules and regulations promulgated pursuant to this section as being hazardous materials, provided, however, that this section shall not apply to transportation of hazardous materials by highway when packed, marked, labeled or accompanied by shipping papers in conformity with the applicable regulations of the interstate commerce commission and placarded in conformity with the provisions of subdivision three of this section; nor to the regular military or naval forces of the United States; nor to the duly authorized militia of any state or territory thereof; nor to the police or fire departments of this state, or of its counties, cities, towns, villages, agencies or instrumentalities, providing the same are acting within their official capacity and in the performance of their duties; nor to the

transportation of explosives as defined in article sixteen of the labor law, or the flammable liquids transported in tank trucks, tank trailers or tank semi-trailers in accordance with section three hundred seventy-eight of the vehicle and traffic law.

(11) *Flammable compressed gas* which shall mean any material or mixture having in the container an absolute pressure exceeding forty p.s.i. at seventy degrees Fahrenheit, or, regardless of the pressure at seventy degrees Fahrenheit, having an absolute pressure exceeding one hundred four p.s.i. at one hundred thirty degrees Fahrenheit, or any liquid flammable material having a vapor pressure exceeding forty p.s.i. absolute at one hundred degrees Fahrenheit as determined by ASTM test D–323, if any one of the following occurs:

(i) Either a mixture of thirteen percent or less, (by volume) with air forms a flammable mixture or the flammable range with air is wider than twelve percent regardless of the lower limit. These limits shall be determined at atmospheric temperature and pressure;

(ii) Using the bureau of explosives, association of American railroads flame projection apparatus, the flame projects more than eighteen inches beyond the ignition source with valve open fully, or, the flame flashes back and burns at the valve with any degree of valve opening;

(iii) Using the bureau of explosives, association of American railroads open drum apparatus, there is any significant propagation of flame away from the ignition source;

(iv) Using the bureau of explosives, association of American railroads open drum apparatus, there is any explosion of the vapor-air mixture in the drum; and

(12) Other identical or similar substances which shall from time to time be identified by the commissioner of transportation by rules and regulations promulgated pursuant to this section shall not apply to the regular military or naval forces of the United States; nor to the duly authorized militia of any state or territory thereof; nor to the police or fire departments of this state, or of its counties, cities, towns, villages, agencies or instrumentalities, providing the same are acting within their official capacity and in the performance of their duties.

Such rules and regulations shall, be no less protective of public safety than the rules and regulations promulgated by the Federal government with respect to the transportation of hazardous materials. The regulations shall set forth the criteria for identifying and listing, and a list of hazardous materials subject to this section as may be amended by the commissioner of transportation from time to time in a manner consistent with the state administrative procedure act and consistent with this section. Such regulations shall include specifications for marking and placarding of vehicles transporting hazardous materials as will be applied pursuant to paragraph (a) of subdivision three of this section. The regulations promulgated hereunder shall include notice that a violation of the rules and regulations is subject to a fine or a period of imprisonment, and the rules and regulations shall set forth the penalty provisions contained in subdivision four of this section. *Provided, however,* That the provisions of this section with respect to the transportation of flammable liquids shall not apply to cities having a population of one million or more, and all local laws or ordinances, except those of such cities having a population of one million or more, regulating the transportation of flammable liquids in trucks, trailers or semi-trailers, are hereby superseded and without force and hereafter no such local law or ordinance shall be adopted to regulate or control the equipment or means of transporting flammable liquids in trucks, trailers or semitrailers.

For the purposes of this section, a *vehicle* shall mean every device in which property may be transported upon a highway, stationary rails or tracks, or on the navigable waterways of the state.

(b) Have power to enforce said rules and regulations through the use of department staff or others pursuant to cooperative agreement.

(c) Have power and is hereby authorized to enter into cooperative agreements with agencies of this and other states and of the federal government in relation to enforcement of said rules and regulations.

(d) Consult with and receive the full cooperation from the commissioner of environmental conservation and other agencies in order to aid the commissioner of transportation in establishing an information system capable of identifying the amount and type of hazardous materials transported in New York, and the methods used for transporting such materials. This system shall be established and maintained in order to assess the volume and potential danger of hazardous materials transported in commerce, by all modes.

(e) Establish and publicize, after consultation with the commissioner of environmental conservation, a public education program to provide publications and technical assistance regarding the regulations governing the transportation of hazardous materials.

(f) Develop a training program for the state police and environmental conservation officers in order to aid such officers in the enforcement of the rules and regulations made pursuant to this section.

2. It shall be unlawful for any person to transport hazardous materials in violation of the rules and regulations promulgated by the commissioner of transportation pursuant to this section.

3. (a) It shall be unlawful for any person to operate or cause to be operated in this state a vehicle transporting hazardous materials unless the vehicle is conspicuously marked or placarded to identify the material transported or its principal hazard in a manner specified in rules and regulations promulgated by the commissioner that are consistent with related federal requirements; provided that the commissioner of transportation may, by rules and regulations prescribe with respect to any specific hazardous materials the minimum quantities below which no placard shall be required.

(b) It shall be unlawful for any person to operate or cause to be operated in this state a vehicle transporting those hazardous wastes identified and listed pursuant to section 27–0303 of the environmental conservation law unless such person complies with the requirements applicable to the transport of such wastes as set forth in article twenty-seven of the environmental conservation law and any rules and regulations promulgated thereunder.

4. Any person found guilty of violating any such rule or regulation shall be subject to a fine of not less than two hundred fifty dollars or more than one thousand dollars or more than two thousand five hundred dollars, or by imprisonment for not more tha[n] ninety days. Except as otherwise provided by law, such a violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a criminal penalty or punishment imposed therefor shall not be deemed for any purpose a criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of a person found guilty thereof; provided, however, that any person transporting hazardous waste in violation of article twenty-seven of the environmental conservation law shall be subject to the penalties provided in article seventy-one of such law.

5. With respect to the transportation of radioactive materials, nothing in this section shall be construed to abrogate or effect [sic] the provisions of any federal or state statute or local ordinance, regulation or resolution which are more restrictive than or which supersede the provisions of this section.

6. Any police officer having lawfully stopped any vehicle which he has reason to believe is transporting hazardous materials or hazardous waste may require that such vehicle shall be driven to a place designated by such police officer to be inspected pursuant to the provisions of this section and the rules and regulations of the commissioner concerning transportation of hazardous materials or pursuant to title nine of article twenty-seven of the environmental conservation law. Provided, however, that such place designated by such police officer shall not exceed a distance of five miles from the place at which such vehicle was stopped.

[FR Doc. 90–10004 Filed 4–30–90; 8:45 am]
BILLING CODE 4910–60–M

federal register

Tuesday
May 1, 1990

Part VI

Department of the Interior

Minerals Management Service

Proposed 1992 Lease Sales in the Gulf of Mexico OCS Region; Call for Information and Nominations; Notice of EIS Intent

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Proposed 1992 Lease Sales in the
Gulf of Mexico OCS Region
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS

Purpose of Call

The purpose of the Call is to gather information for Outer Continental Shelf (OCS) Lease Sale 139 in the Central Gulf of Mexico (CGOM) Planning Area, tentatively scheduled for March 1992, and an OCS Lease Sale (Unnumbered) in the Western Gulf of Mexico (WGOM) Planning Area, tentatively scheduled for August 1992.

Information and nominations on leasing, exploration, and development and production within the CGOM and WGOM Planning Areas are sought from all interested parties. This initial information-gathering step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356), and regulations at 30 CFR 256. This Call does not indicate a preliminary decision to lease in the areas described below.

Description of Area

The general area of this Call covers the entire central and western portions of the Gulf of Mexico between approximately 88° W. longitude on the east and approximately 97° W. longitude on the west and extends from the seaward boundary of the Submerged Lands Act (SLA) grant seaward to the provisional maritime boundary between the United States and Mexico. The entire Call area is offshore the States of Texas, Louisiana, Mississippi, and Alabama.

The CGOM Planning Area is bounded on the east by approximately 88° W. longitude. Its western boundary begins at the offshore boundary between Texas and Louisiana and proceeds southeasterly to approximately 28° N. latitude, thence east to approximately 92° W. longitude, thence south to the provisional maritime boundary with Mexico which constitutes the southern boundary of the area. The northern part of the area is bounded by the seaward boundary of the SLA grant offshore Louisiana, Mississippi, and Alabama.

The WGOM Planning Area is bounded on the west and north by the seaward boundary of the SLA grant offshore Texas and on the east by the CGOM Planning Area. The area extends south to the provisional maritime boundary with Mexico. The entire area is offshore Texas and, in deeper water, offshore Louisiana.

A large-scale Call for Information Map depicting each planning area on a block-by-block basis is available without charge from:

Minerals Management Service
Public Information Unit
1201 Elmwood Park Boulevard
New Orleans, Louisiana 70123-2394
Telephone: (504) 736-2519

Areas Deferred from this Call

High Island Area, East Addition, South Extension, (Flower Gardens), Block A-375 and Block A-398 in the WGOM.

Instructions on Call

Indications of interest and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled "Nominations for Proposed 1992 Lease Sales in the Gulf of Mexico" or "Comments on the Call for Information and Nominations for Proposed 1992 Lease Sales in the Gulf of Mexico." The standard Call for Information Map and indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated above.

The standard Call for Information Map delineates the Call area, all of which has been identified by the Minerals Management Service (MMS) as having potential for the discovery of accumulations of oil and gas. Respondents are requested to indicate interest in and comment on any or all of the Federal acreage within the boundaries of the Call area that they wish to have included in proposed Sale 139 in the CGOM and proposed Sale (Unnumbered) in the WGOM.

Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record. Those indicating such interest are required to do so on the standard Call for Information Map by outlining the areas of interest along block lines.

Respondents should rank areas in which they have expressed

interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], 3 [low]). We encourage respondents to be specific in indicating blocks by priority, as blanket nominations on large areas are not useful in providing information pertinent to analysis of industry interest. Areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3.

Respondents may also submit a detailed list of blocks nominated (by Official Protraction Diagram and Leasing Map designations) to ensure correct interpretation of their nominations. Specific questions may be directed to the Chief, Leasing and Adjudication Section, at (504) 736-2765. Official Protraction Diagrams and Leasing Maps can be purchased from the Public Information Unit, referred to above.

Comments are sought from all interested parties about particular geological, environmental, biological, archaeological and socioeconomic conditions or conflicts, or other information which might bear upon the potential leasing and development of particular areas. Comments are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sales and State Coastal Management Programs (CMP's). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the standard Call for Information Map.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to identify the areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. This information will be used to make a preliminary determination of the potential advantages and disadvantages of oil and gas exploration and development to the region and the Nation. A third purpose for this Call is to use the comments collected to initiate the scoping process for the Environmental Impact Statement (EIS) and analyze alternatives to the proposed action. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore operations. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and a State CMP.

Existing Information

An extensive environmental studies program has been underway in this area since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies can be obtained from the Public Information Unit referenced above. The reports may also be ordered, for a fee, directly from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703) 487-4650.

In addition, a program status report for continuing studies in this area can be obtained from the Chief, Environmental Studies Section, MMS Gulf of Mexico OCS Region, at the address stated under "Description of Area," or by telephone at (504) 736-2896.

Summary Reports and Indices and technical and geological reports are also available for review at the MMS Gulf of Mexico OCS Region at the same address. Copies of the Gulf of Mexico OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070. Telephone: (703) 393-1080).

Tentative Schedule

Final delineation of the areas for possible leasing will be made at a later date only after compliance with established departmental procedures, all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and the OCS Lands Act, as amended.

The following is a list of tentative milestone dates that will precede this sale.

	CGOM Sale 139	WGOM Sale (Unnumbered)
Comments due on the Call	June 1990	June 1990
Notice of Intent Comments Due (Scoping)	June 1990	June 1990
Area Identification	August 1990	August 1990
Draft EIS published	February 1991	February 1991
Public Hearings held on Draft EIS	April 1991	April 1991

Final EIS published	August 1991	August 1991
Proposed Notice of Sale announced	October 1991	February 1992
Governor's comments due on Proposed Notice	December 1991	April 1992
Final Notice of Sale published	January 1992	June 1992
Sale Date	March 1992	August 1992

NOTICE OF INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the MMS is announcing its intent to prepare an EIS on the oil and gas leasing proposals known as Sale 139 in the CGOM and Sale (Unnumbered) in the WGOM, off the States of Texas, Louisiana, Mississippi, and Alabama. The Notice of Intent also serves to announce the scoping process that will be followed for this EIS. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid the MMS in determining the significant issues and alternatives to be analyzed in the EIS.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the areas defined in the Area Identification procedure as the proposed areas of the Federal actions. Alternatives to the proposal which may be considered for each sale include delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues which should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, at the address stated under "Description of Area." Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the Proposed 1992 Lease Sales in the Gulf of Mexico." Comments are due no later than 45 days from the publication of this Notice in the Federal Register.

Scoping meetings will be held in appropriate locations to obtain additional comments and information regarding the scope of the EIS.

Director, Minerals Management Service

Approved:

Barry Williamson

ACTING Assistant Secretary - Land and Minerals Management

James M. Hughes

Date

[FR Doc. 90-10096 Filed 04-30-90; 8:45 am]
BILLING CODE 4310-MR-C

federal register

Tuesday
May 1, 1990

Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 9
Federal Acquisition Regulation (FAR); Definition of Contractor; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

Federal Acquisition Regulation (FAR); Definition of Contractor

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to FAR 9.403 to clarify perceived ambiguities in the definition of "contractor" which occasionally arises in relation to investigations and suspension and debarment proceedings. The revision will make it clear that the definition includes persons or entities that contract with the Government indirectly through others or who may reasonably be expected to act as agents or representatives for another contractor.

DATES: Comments should be submitted to the FAR Secretariat at the address shown below on or before July 2, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., room 4041, Washington, DC 20405. Please cite FAR Case 90–13 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely clarifies a definition and imposes no requirements of any kind upon small entities.

However, comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 90–610 (FAR Case 90–13) in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: April 23, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 9 be amended as set forth below:

PART 9—CONTRACTOR QUALIFICATION

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.403 is amended by revising the definition "Contractor" to read as follows:

9.403 Definitions.

* * * * *

Contractor, as used in this subpart, means any individual or other legal entity that (a) directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract or (b) conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

* * * * *

[FR Doc. 90–10035 Filed 4–30–90; 8:45 am]
BILLING CODE 6820–34–M

federal register

Tuesday
May 1, 1990

Part VIII

The President

Memorandum of April 26, 1990—Actions Concerning the Generalized System of Preferences

Federal Register

Federal Register
Vol. 55, No. 84
Tuesday, May 1, 1990

Presidential Documents

Title 3—

The President

Memorandum of April 26, 1990

Actions Concerning the Generalized System of Preferences

Memorandum for the United States Trade Representative

Pursuant to subsections 502(b)(4) and 502(b)(7) and section 504 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2462(b)(4), 2462(b)(7), and 2464), the President is authorized to make determinations concerning the alleged expropriation without compensation by a beneficiary developing country, to make findings concerning whether steps have been taken or are being taken by certain beneficiary developing countries to afford internationally recognized worker rights to workers in such countries, and to modify the application of duty-free treatment under the Generalized System of Preferences (GSP) currently being afforded to such beneficiary developing countries as a result of my determinations.

Specifically, after considering private sector requests for a review of the alleged violation by Costa Rica and Uruguay of the expropriation provisions of subsection 502(b)(4) of the 1974 Act, I have decided to terminate the reviews of Costa Rica and Uruguay without prejudice, noting that modification of GSP eligibility is not warranted at this time.

Second, after considering various private sector requests for a review of whether or not certain beneficiary developing countries have taken or are taking steps to afford internationally recognized worker rights (as defined in subsection 502(a)(4) of the 1974 Act) to workers in such countries, and in accordance with subsection 502(b)(7) of the 1974 Act, I have determined that Indonesia and Thailand have taken or are taking steps to afford internationally recognized worker rights, and I have determined that Liberia has not taken and is not taking steps to afford such internationally recognized rights. Therefore, I am notifying the Congress of my intention to suspend the GSP eligibility of Liberia. Finally, I have determined to continue to review the status of such worker rights in Benin, the Dominican Republic, Haiti, Nepal, and Syria.

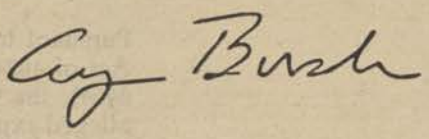
Further, pursuant to section 504 of the 1974 Act, after considering various requests for a waiver of the application of section 504(c) of the 1974 Act (19 U.S.C. 2464(c)) with respect to certain eligible articles, I have determined to modify the application of duty-free treatment under the GSP currently being afforded to certain articles and to certain beneficiary developing countries.

Specifically, I have determined, pursuant to subsection 504(d)(1) of the 1974 Act (19 U.S.C. 2464(d)(1)), that the limitation provided for in subsection 504(c)(1)(B) of the 1974 Act should not apply with respect to certain eligible articles because no like or directly competitive article was produced in the United States on January 3, 1985. Such articles are enumerated in the list of Harmonized Tariff Schedule of the United States (HTS) subheadings in Annex A.

Pursuant to subsection 504(c)(3) of the 1974 Act, I have also determined to: 1) waive the application of section 504(c) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries; and 2) waive the application of subsection 504(c)(2)(B) of the 1974 Act with respect to certain eligible articles from certain beneficiary developing countries. I have received the advice of the United States International Trade Commission on whether any industries in the United States are likely to be adversely affected

by such waivers, and I have determined, based on that advice and on the considerations described in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)), that such waivers are in the national economic interest of the United States. The waivers of section 504(c) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries opposite such HTS subheadings enumerated in Annex B. The waivers of subsection 504(c)(2)(B) of the 1974 Act apply to the eligible articles in the HTS subheadings and the beneficiary developing countries opposite such HTS subheadings enumerated in Annex C.

These determinations shall be published in the **Federal Register.**



THE WHITE HOUSE,
Washington, April 26, 1990.

[FR Doc. 90-10309
Filed 4-30-90; 12:19 pm]
Billing code 3195-01-M

Editorial note: For the President's letter to the Speaker of the House of Representatives and the President of the Senate, dated April 26, on the GSP modifications, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 17).

Annex A

HTS subheadings for which no like or directly competitive article was produced in the United States on January 3, 1985

HTS Subheading
1515.30.20
2001.90.33
2005.90.87
2924.29.42
9405.91.10

Annex B

HTS subheadings and countries granted waivers of section 504(c) of the 1974 Act

HTS Subheading	Country	HTS Subheading	Country
3903.19.00	Mexico	8471.91.00	Mexico
4818.10.00	Mexico	8471.99.30	Malaysia
4818.20.00	Mexico	8504.40.00	Malaysia
4818.30.00	Mexico	8511.30.00	Mexico
8471.20.00	Mexico	8525.20.30	Malaysia

Annex C

HTS subheadings and countries granted waivers of subsection 504(c)(2)(B) of the 1974 Act

HTS Subheading	Country	HTS Subheading	Country
3904.10.00	Mexico	8523.20.00	Mexico
8421.23.00	Mexico	9503.70.80	Mexico
8421.31.00	Mexico	9503.90.50	Mexico
8505.19.00	Mexico	9503.90.60	Mexico

[FR Doc. 90-10309
Filed 4-30-90; 12:19 pm]
Billing code 3195-01-C

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Legal staff	523-4534
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Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, MAY

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List April 27, 1990

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 1990

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 1	May 16	May 31	June 15	July 2	July 30
May 2	May 17	June 1	June 18	July 2	July 31
May 3	May 18	June 4	June 18	July 2	August 1
May 4	May 21	June 4	June 18	July 3	August 2
May 7	May 22	June 6	June 21	July 6	August 6
May 8	May 23	June 7	June 22	July 9	August 6
May 9	May 24	June 8	June 25	July 8	August 7
May 10	May 25	June 11	June 25	July 9	August 8
May 11	May 29	June 11	June 25	July 10	August 9
May 14	May 29	June 13	June 28	July 13	August 13
May 15	May 30	June 14	June 29	July 16	August 13
May 16	May 31	June 15	July 2	July 16	August 14
May 17	June 1	June 18	July 2	July 16	August 15
May 18	June 4	June 18	July 2	July 17	August 16
May 21	June 5	June 20	July 5	July 20	August 20
May 22	June 6	June 21	July 6	July 23	August 20
May 23	June 7	June 22	July 9	July 23	August 21
May 24	June 8	June 25	July 8	July 23	August 22
May 25	June 11	June 25	July 9	July 24	August 23
May 29	June 13	June 28	July 13	July 30	August 27
May 30	June 14	June 29	July 16	July 30	August 28
May 31	June 15	July 2	July 16	July 30	August 29